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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 10 (AS)

5 AVRAHAM EISENBERG,

6 Defendant.

Trial

7 -----x  
8 New York, N.Y.  
9 April 17, 2024  
10 9:30 a.m.

11 Before:

12 HON. ARUN SUBRAMANIAN,

13 District Judge  
14 -and a jury-

15 APPEARANCES

16 DAMIAN WILLIAMS,

United States Attorney for the  
Southern District of New York

17 PETER J. DAVIS

18 THOMAS S. BURNETT

TIAN HUANG

Assistant United States Attorneys

19 WAYMAKER LLP

Attorneys for Defendant

20 BRIAN E. KLEIN

ASHLEY MARTABANO

21 RILEY SMITH

-and-

22 TALKIN MUCCIGROSSO & ROBERTS, LLP

SANFORD N. TALKIN

23 NOAM B. GREENSPAN

24 Also Present: Brandon Racz, FBI

Ryan Sears, Paralegal Specialist-USAO

25 Jonathan Oshinsky, Paralegal Specialist-USAO

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(Trial resumed; jury not present)

THE COURT: Before we get started with summations, just to put this on the record, yesterday the Court emailed the parties to inform them about a couple of changes to the instructions and to the verdict sheet, so I will just put that into the record.

The email to the parties indicated that references to in their property rights were removed from pages 16 and 18 in line with the change requested by the government at yesterday's conference to which the defendant did not object. On page 14, attempted commodities manipulation was added to the description of Count Two in the indictment.

The following changes were made to the verdict sheet. The verdict sheet omitted reference to attempted commodities manipulation, but which is in the jury charge, so the verdict form that the Court will provide to the jury adds that count, and space for all the jurors' signatures was added consistent with the jury charge. The Court informed the parties that if they had any objections, they should inform the Court. We received no objection from the government, and we received an email from the defense indicating that they had no objections.

Anything, Mr. Davis, to raise with respect to that email?

MR. DAVIS: No, your Honor.

THE COURT: Anything from the defense?

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1 MR. KLEIN: No, your Honor.

2 THE COURT: Anything further that we need to discuss  
3 before we bring the jury in?

4 MR. DAVIS: No, your Honor.

5 MR. KLEIN: No, your Honor.

6 THE COURT: Mr. Hernandez, can you bring in our jury.

7 THE DEPUTY CLERK: Yes, your Honor.

8 (Jury present)

9 THE COURT: Welcome back, members of the jury. I hope  
10 you had a pleasant evening. Once again, on behalf of the  
11 parties and the Court, I wanted to thank you for all the hard  
12 work and close attention that you have paid to this case so  
13 far.

14 We are going to proceed with summations this morning.

15 As you know, first, we will be proceeding with the  
16 government's summation, and then the defense summation, and  
17 then the government will have a chance at rebuttal. The reason  
18 that we are proceeding that way is because the government at  
19 all times bears the burden of proof, as I have told you before  
20 and will tell you again.

21 I remind you that what the lawyers say is not  
22 evidence. Your recollection of the evidence controls. That is  
23 to say, if they say anything about the evidence that differs  
24 from your recollections, it is your recollection that controls.

25 Similarly, to the extent that the lawyers comment on

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Summation - Mr. Davis

1 what they anticipate my instructions will be and comment on the  
2 law, as they are permitted to do, if there is any conflict  
3 between what they say to you and what I tell you after they  
4 finish, it is my instructions that will govern.

5 With that understanding, however, you should listen to  
6 what they have to say. This is an important part of the  
7 process. It may be the most important part of the process.  
8 It's the lawyers' opportunity to summarize the evidence for you  
9 and tie it all together and to make arguments to you as to what  
10 conclusions you should draw from the evidence. It's a very  
11 helpful part of the process. For that reason, you should  
12 listen with care to both sides. I know you will because you've  
13 been listening with care to the presentations this entire  
14 trial, and I am grateful to you for that.

15 We will take appropriate breaks during the day just to  
16 ensure that you can listen and give careful attention to both  
17 sides to all the arguments. So if anyone needs a break after  
18 an argument, please let Mr. Hernandez know, and we will make  
19 sure that we can take appropriate breaks.

20 With that, we will proceed.

21 Mr. Davis. Are you ready to proceed?

22 MR. DAVIS: Yes, your Honor. Thank you.

23 Avraham Eisenberg ran a con. During this trial you  
24 heard how he lied and deceived to put millions in his pocket.  
25 He created a fake trade with himself. He pumped the price

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Summation - Mr. Davis

1 through the roof. He hid behind a Ukrainian woman's identity,  
2 and he lied. He said he was borrowing, but he was simply  
3 stealing.

4 Now, his deception may have been on cryptocurrency  
5 platforms, but make no mistake, this was old-fashioned  
6 manipulation and fraud. He pumped the price and lied so he  
7 could steal people's money, plain and simple.

8 And this fraud, the manipulation, it was brazen. It  
9 was criminal from start to finish. In private messages he said  
10 he was going to pump the price. He said he was going to pull  
11 borrows. He looked up the statute of limitations for market  
12 manipulation. He stole a hundred million dollars and fled the  
13 country, and he thought he could get away with it. But not  
14 anymore.

15 Ladies and gentlemen, you have heard the witnesses.  
16 You have seen the documents. You know the truth. It is time  
17 to hold the defendant accountable for what he did, for blatant  
18 manipulation, for fraud, for stealing.

19 Now, this closing statement, it's our opportunity to  
20 help you put the evidence together. Here is what we are going  
21 to cover.

22 First, I am going to talk about the defendant's  
23 scheme. We will walk step by step through each layer of  
24 deception. Then we are going to talk about the charges.

25 But before we dive in, I want to take a step back.

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Summation - Mr. Davis

1 Now that you have seen the evidence, you know exactly what the  
2 defendant's con was. He borrowed from Mango Markets based on  
3 fake collateral. He told Mango Markets that he had something  
4 valuable, a shiny diamond ring, and he put that diamond ring up  
5 as collateral for his borrow, 110 million in cryptocurrency  
6 that he pulled off the platform and fled with.

7 But the defendant was not borrowing. He was stealing.  
8 And the diamond ring, it was a fake. It only appeared that way  
9 because the defendant made it look that way. His fake diamond  
10 ring, the Mango perpetuals that he bought, they only looked  
11 valuable because he pumped the price. He ran off with every  
12 deposit on the platform and left Mango Markets holding a  
13 worthless, fake ring.

14 I want to be clear about something. The defense has  
15 no burden here. But when they make arguments, it is your job  
16 to scrutinize them, to ask yourselves if they hold water. And  
17 what the defense has suggested in this trial is that the  
18 defendant thought he was allowed to steal every last deposit on  
19 the platform because it was technically possible for him to do  
20 it. But you sat through this trial. You know that's not what  
21 the evidence showed. The evidence showed over and over again  
22 that the defendant knew what everyone knows, that he could not  
23 manipulate the market and lie. Remember, he researched the law  
24 before he ran his scam. And once he got his money, he fled the  
25 country. He knew he was violating the law.

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Summation - Mr. Davis

1           We are here today because there is no special set of  
2 rules for Mr. Eisenberg. We are here today because  
3 manipulation, lies, and deceit, it's criminal, whether it  
4 happens on Wall Street or on a computer program.

5           I want to dive in now. Let's go through each stage of  
6 the defendant's scheme. I want to talk about the facts that  
7 show that this was a premeditated and deceptive con.

8           Along the way we are going to talk about the  
9 defendant's actions and the defendant's words and how they  
10 prove over and over again that the defendant is guilty.

11           Let's put something to rest right away. The defendant  
12 knew that manipulation and fraud was illegal. This is  
13 Government Exhibits 1704 and 609. You saw that, in July 2022,  
14 months before his own crimes, the defendant sued someone in  
15 federal court for price manipulation of a cryptocurrency.  
16 Let's look on the right here. The defendant sued them because  
17 they, and this is the highlighted portion in the middle, spent  
18 tens of millions of dollars buying up waves so that the price  
19 went up from single digits to a high of \$60.

20           Then the next sentence: They then turned those waves  
21 into USDN at this inflated price and borrowed about 550 million  
22 of USDC and USDT against it. Does this sound familiar? The  
23 defendant sued them for market manipulation and fraud. He sued  
24 them for market manipulation because he knew then, as he did  
25 when he committed these crimes, that it's illegal to

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Summation - Mr. Davis

1 intentionally distort a market, that tricking people into  
2 thinking an asset is valuable when it's not, it's deceptive and  
3 it's wrong, that making people think that a price is the result  
4 of supply and demand when it's really just you pumping it up.

5 It's a crime. Using inflated collateral to borrow,  
6 it's fraud. It's lying. This is important because the  
7 defendant did not think there were no rules in cryptocurrency.  
8 He knew that the laws against fraud and price manipulation  
9 applied, and he knew why they applied.

10 Let's fast forward a little bit. I want to talk about  
11 leading up to October 11. Let's start in September of 2022.  
12 This is about a month before the defendant stole from the  
13 platform.

14 I want to talk about the defendant's private messages,  
15 private Discord messages. This is Government Exhibit 502A. We  
16 have taken the Excel spreadsheet and tried to put them in chat  
17 form, but the text is the same. This is a private chat that  
18 the defendant never thought you would see, and the messages  
19 show you how he knew his scheme was criminal. They show you  
20 that he knew he was lying.

21 Let's start with this first chat. He says: The idea  
22 is you buy a ton, massively increase the price, and borrow on  
23 lending to lever.

24 You know what he's talking about, because a few lines  
25 down he references MNGO, the Mango token.



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Summation - Mr. Davis

1           When he is saying massively increase the price, he is  
2 saying he is going to manipulate the price. One person cannot  
3 decide that they are going to massively increase the price.  
4 That is not how markets work. Markets have buyers and sellers,  
5 supply and demand. What the defendant is talking about is  
6 different. He is talking about singlehandedly moving up a  
7 price. He is talking about brute-force price manipulation.

8           But there is more in this chat that we should talk  
9 about. This is the next line in the same chat. MNGO, that's  
10 the Mango token, has much lower liquidity, but lower limits, so  
11 I'd need to pump it a lot more to be profitable.

12           He says he is going to pump it, that he needs to pump  
13 it a lot more to be profitable. Pumping is not trading.  
14 Pumping is not an investment. Pumping is not supply and  
15 demand. Pumping is criminal. And what he is saying is, he  
16 needs to create a really fake price in order to steal money  
17 from the platform. He is not saying he has a great investment  
18 in the Mango token. He is talking about taking the market into  
19 his own hands and moving the price. He is saying that his  
20 scheme only makes sense if he can move the price a lot. He is  
21 telling you exactly how he is going to steal from the platform.  
22 This is just cheating. It's cheating because creating a price,  
23 he's creating a price that isn't real. It's cheating because  
24 he's using that fake price to make other people think he has  
25 something really valuable. That's the manipulation.

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Summation - Mr. Davis

1           You all know that the defendant was well aware that  
2           pumping was illegal. The defendant knew that people get  
3           criminally charged for pumping in the markets.

4           This is Government Exhibits 800 and 800A. This is  
5           still September, so we are about a month before his own crimes.  
6           Here is what Mr. Eisenberg tweets. He tweets about a criminal  
7           prosecution for market manipulation. This tweet shows you that  
8           he knows it is a crime to pump the price. It shows you that he  
9           knows what he's about to do is wrong. It shows you what he's  
10          describing in those chats he knows is criminal.

11          But there is more. This is Government Exhibits 802  
12          and 802A, another tweet from Mr. Eisenberg. He says: The SEC  
13          going after a market maker for manipulating trading volume and  
14          price of crypto securities.

15          The defendant did not need to be told that pumping a  
16          price was illegal. He knew full well that this was criminal  
17          through and through. These tweets show you that he knew he was  
18          breaking the law.

19          But there is more. Let's go back to 502A. Again,  
20          this is that September chat, the private message where he's  
21          talking about pumping. What else does he say? He says: We  
22          can pull borrows.

23          Pull borrows. He is going to take money that he is  
24          supposed to be borrowing off the platform and run with it. He  
25          is going to say that he is borrowing when he's really stealing.

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Summation - Mr. Davis

1 That is how he is going to make money from the scheme, by lying  
2 and pulling every last deposit off the platform, literally  
3 running away with the money. That's the fraud.

4 One more chat. He says: Either it's a ghost town and  
5 I can 1,000 times it. He's talking about 1,000 timesing the  
6 price. He means he can move the price and then lie about the  
7 value of his collateral, that he can make it look like the  
8 collateral is 1,000 times more valuable than in reality. This  
9 is how he is going to make the fake ring shine, moving the  
10 price on purpose. That is manipulation. Lying about the value  
11 of the collateral and lying about borrowing, that's the fraud.  
12 And what you're reading in this chat is the defendant's  
13 playbook for the crimes he is about to commit. This chat, the  
14 one he never wanted you to see, tells you exactly what is in  
15 his mind. It shows you he knows what he was doing was illegal.  
16 It shows you that he knew the law applied to him.

17 Let's get closer in time to the crime itself. Now we  
18 are on October 8, so three days before October 11 and the  
19 crime. I want to talk about the defendant's search history  
20 during this time. You saw what was on top of the defendant's  
21 mind three days before he commits this crime. This is  
22 Government Exhibit 119A. What is he searching for during this  
23 time? He is searching for the statute of limitations for  
24 market manipulation. That's the time limit for how long after  
25 a crime you can be prosecuted. This search has nothing to do

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Summation - Mr. Davis

1 whether something is illegal. It's about how long you have to  
2 be on the run before you can get caught. He searches for the  
3 elements of fraud. He searches for market manipulation under  
4 federal law. He even goes on the Wikipedia page for fraud.

5 Look at the last one. He visits a Department of  
6 Justice website announcing a criminal sentence for someone who  
7 manipulated the market three days before he commits the crime.  
8 He Googles the crime to see how long people are spending in  
9 jail for it. This web history, it's crushing proof of the  
10 defendant's guilt. These searches show you that the defendant  
11 knew that everything he was about to do on October 11 was  
12 illegal, and he did it anyway.

13 But there is one more thing I want to show you.  
14 Within an hour of searching for fraud, Wikipedia for fraud,  
15 what website does he visit? Trade.mango.markets/borrow. He is  
16 searching for the elements of fraud around the same time he is  
17 going to the borrow page of Mango, because he's about to commit  
18 fraud on the borrow page of Mango. These searches show you  
19 that he knows he can't do this, that he knows it's unlawful.

20 Let's zoom in on October 11. I want to talk about the  
21 stages of the defendant's crime. This is Government Exhibit  
22 1351. I want to start in the first part of the day, so  
23 midnight to 6:20 p.m. The defendant has his playbook. You all  
24 read that in the private chat, but he has to move his funds  
25 around to set up the con. He needs to trade a gigantic

O4HMEIS1

Summation - Mr. Davis

1 perpetual with himself, and he needs to pump that price of that  
2 perpetual with illegal trade after illegal trade.

3 Government Exhibit 1351 is Special Agent DeCapua's  
4 chart of the fund flows. This is showing how the defendant set  
5 the table for the crime.

6 A couple main takeaways from it.

7 First, the defendant is behind each one of these  
8 transfers. That's not in serious dispute. But I want to look  
9 a little closer at these wallets. I want to look a little  
10 closer at these transfers. Let's start with the blue wallet  
11 towards the left of the screen, the one that says Avraham  
12 Eisenberg underneath. This wallet is in his own name. This is  
13 the Circle wallet you have been hearing about during this  
14 trial. This is the registration information for that account.  
15 It's under his name, with his passport, has his address.

16 Here is the important thing about this. This Circle  
17 account, this is not the account that Mr. Eisenberg used to  
18 pump the price. That's important because he did not want his  
19 name connected with this con. He wanted to hide. He wanted to  
20 put distance between his name and his crime. This shows you he  
21 had a guilty mind.

22 Let's go back and break this down. Now we are back on  
23 1351. Each step in this process is meant to create distance  
24 between Mr. Eisenberg's name and the crime. The blue wallet is  
25 the account in his name. The first thing he does to stake the

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Summation - Mr. Davis

1 funds for this crime, he sends it to an intermediate wallet,  
2 this like beige one in the middle, sends 15 million USDC.

3 But he doesn't stop there. He sends that to another  
4 wallet, the bochen clean wallet at FTX. This wallet is in the  
5 name of Natalia Bochenkova. This is deceptive. It makes it  
6 look like someone named Natalia Bochenkova is behind this when  
7 it's really the defendant.

8 Let's look at this account. This is the registration  
9 information for the Bochenkova FTX account. This is Government  
10 Exhibits 1246 and 1247, and the account information is in 1219.

11 You don't need me to tell you this, but Natalia  
12 Bochenkova is not Avraham Eisenberg. You learned that this was  
13 the defendant's dummy account on FTX. This was his disguise.  
14 And if you are using a disguise, you are trying to hide  
15 something.

16 You also learned about how Mr. Eisenberg purchased  
17 this account. He purchased it from someone named Dmitriy. We  
18 are going to look at those chats. But I want you to ask  
19 yourself, why is the defendant buying another person's  
20 information? He wants to hide who he is. He wants to hide his  
21 involvement in the crime. He wants to put distance between his  
22 name and his scheme.

23 (Continued on next page)  
24  
25

O4HCeis2

Summation - Mr. Davis

1 MR. DAVIS: He doesn't want to get caught.

2 So this is that Dimitriy chat. This is Government  
3 Exhibit 116. Now, this is not a chat between the defendant and  
4 Natalia Bochenkova. This is a chat between someone named  
5 Dimitriy and the defendant.

6 And look at the text from Dimitriy at the top. He  
7 says, today, tomorrow, the verification of FTX will be done for  
8 a first company, remaining two verifications are ready. He  
9 then says, there's a new company with three accounts, already  
10 done verification with FTX and LKX. The defendant responds,  
11 I'll be interested in this one soon, still waiting for the SIM  
12 to come Tuesday on the second company to get access. So  
13 Natalia Bochenkova was not the only account that the defendant  
14 was trying to purchase.

15 And what happens next? Dimitriy sends a bunch of  
16 passwords and user names and bank account information for  
17 Natalia Bochenkova. This is 116B. Why is the defendant buying  
18 someone else's log in information? Why is he buying passwords  
19 and bank accounts in someone else's name? It's because he  
20 wants to hide who he is. He wants to put distance between his  
21 own name and the crime. It shows you he's committing a crime.  
22 It shows you he doesn't think he's acting above board. He's  
23 not out in the open on this. He is not using his account, he's  
24 using a disguise.

25 We're back to 1351, still setting the table for the

O4HCeis2

Summation - Mr. Davis

1 fraud. We made our way to the FTX account, bochen.clean, the  
2 Natalia Bochenkova. But we're not even done. We go to two  
3 more intermediary wallets, \$5 million each. One goes up, one  
4 goes down. Then he uses those two wallets to set up two  
5 different accounts on Mango Markets. Look how far we are from  
6 the Circle account at this point. We are four wallets removed.  
7 He puts a wallet in between the Circle account and Natalia  
8 Bochenkova's account, then the Bochenkova account goes to two  
9 separate wallets, then those two separate wallets open two more  
10 accounts. This is deceptive. He is trying to hide. He is  
11 putting distance between his name and the crime.

12 All right. So now let's see the account opening on  
13 Mango Markets. This is Government Exhibits 930 and 927. The  
14 defendant is behind both these accounts. Look at the timing  
15 and the amount of the deposits in these accounts. Within one  
16 minute of each other, they both get almost 5 million in USDC.  
17 But this is the defendant making both these deposits. This is  
18 deceptive, it's deceptive because he's controlling both of  
19 these accounts. He does not open these accounts to have  
20 separate trading strategies, he opens them for one purpose, so  
21 that they could trade with each other, so that he can make his  
22 fake bet. Their sole purpose is to stake the fraud, but he's  
23 making it look like they're two independent users on Mango  
24 Markets with 5 million USDC ready to spend.

25 So we're going to move on from 1351. But each layer



O4HCEis2

Summation - Mr. Davis

1 of this transfer is meant to deceive, it's meant to put  
2 distance between his name and his crime, it's meant to set up  
3 two different accounts on Mango Markets with the same amount of  
4 funds. It's deceptive, it's deceptive because it looks to  
5 Mango like there are two different users about to engage in  
6 legitimate activity when, in reality, it's just the defendant.  
7 So that sets the table.

8 The defendant has his con planned and he moved his  
9 funds around. He's got these two different accounts at Mango  
10 Markets with the same amount of money. We looked at these  
11 deposits, we looked at the timing. This is when he buys his  
12 fake bet.

13 This is Government Exhibit 921 and 926. He takes out  
14 three gigantic perpetuals with himself. Look at the timestamps  
15 on these trades. He does this in a minute. Look at the amount  
16 of contracts he purchases, almost \$500 million. And look at  
17 the times. They line up identically. These are both of his  
18 accounts, he's on both sides of this, he is both the long and  
19 the short. If the price of Mango goes up, one of his accounts  
20 makes money and one of his accounts loses money. If the price  
21 of Mango goes down, one of his accounts loses money and one of  
22 his accounts makes money. But no matter what, he hasn't gained  
23 or lost anything. This shows you he's trying to deceive. It  
24 shows you he wants Mango Markets to think that this is a  
25 legitimate trade with two users when, in reality, it's just one

O4HCEis2

Summation - Mr. Davis

1 user trading with himself. And you heard that this trade makes  
2 no economic sense if the same person is on both sides of it.

3 This is Government Exhibit 1302. This is the slide  
4 that Dr. Mordecai showed you of how one side goes up, the other  
5 side goes down, the net position of being on both the long and  
6 the short. It shows it makes no economic sense, but it does  
7 make sense if you're committing a crime. It makes sense if  
8 you're going to make money off of this by lying, and that's  
9 what the defendant was doing here. The fake trading was going  
10 to allow him to steal a huge amount of money. It was going to  
11 allow him to pump the price and to pull borrows. This is  
12 deceptive. There's usually a short side that would care about  
13 losing their money, but here, Mr. Eisenberg is on both sides.  
14 He only cares about his own bottom line. These giant trades,  
15 they're not trades at all. It's just a tool for the scheme.

16 The other thing about these trades we have to talk  
17 about is their size. I mean, they're gigantic. This is  
18 Government Exhibit 1303. This is the chart showing open Mango  
19 perpetual contracts leading up to October 11th. You can see  
20 the line is basically at the bottom until we get to the  
21 defendant's trading where it skyrockets to 500 million  
22 contracts. This shows you about the defendant's intent in this  
23 scheme. It shows you his intent was to manipulate the price  
24 because the bigger the perpetual, the more impact his  
25 manipulation would have. Remember when he said, I need to pump

O4HCeis2

Summation - Mr. Davis

1 it way more to be profitable, this is what he's talking about.  
2 The bigger the perpetual, the more he can steal.

3 And think about what we just talked about. He's net  
4 zero on this trade. He's trading with himself. So why does  
5 the size matter? The size matters because of the role it's  
6 playing in this fraud. It allows him to pump one side, to lie,  
7 and to steal funds. That's why it matters. This is not a real  
8 investment. This is not a real trade. This is just a tool for  
9 the defendant's crime. He set up his fake trade, he has his  
10 tool in place. You know the next step because he gave you the  
11 playbook. He's got to pump it, right? He has to make what he  
12 just bought appear valuable. He has to make it look like one  
13 side of that bet is worth something valuable. He has to make  
14 his ring shine.

15 This is slide 1353. We're going to go step by step  
16 through this slide. But this is the pump right here.

17 The first thing we should know is where he is doing  
18 this trading, where, what location. He's doing them at  
19 AscendEX, he's doing them at FTX, and he's doing them at  
20 Serum DEX. Is that a random coincidence? No. Those are the  
21 three exact exchanges that feed into the price of the Mango  
22 perpetual. The fact that he is trading on these three  
23 exchanges shows you his intent is to manipulate. It shows you  
24 he's doing this to manipulate because he's picking the  
25 locations you would pick if you wanted to influence the price.

O4HCEis2

Summation - Mr. Davis

1 This is the manipulation in practice right here.

2 So you remember hearing about the oracle from  
3 Mr. Hermida from Switchboard. This is where he explained that  
4 the three exchanges that the oracle looks at are FTX, AscendEX,  
5 and Serum, the same three locations that the defendant pumps.

6 Let's read his testimony. What was your rationale for  
7 choosing the three exchanges that your group did for choosing  
8 FTX, AscendEX, and Serum. He answers at the bottom there, that  
9 is to say so it could have the best sort of truest  
10 representation of the price at that point in time. This is an  
11 important point because that's the point of having oracle look  
12 at multiple exchanges, to try and get the truest representation  
13 of a price, not to have one person dictate what the price is.  
14 It's to prevent people from manipulating.

15 And Switchboard also picked these locations because  
16 these locations had rules. They had rules against  
17 manipulation. This is AscendEX's terms of service. It shows  
18 you that people expect that the oracle was going to be on  
19 unmanipulated prices, not one person pumping. But the  
20 defendant did not see it that way. For him, this was a  
21 roadmap. All he needed to do was pump these exchanges in big  
22 enough amounts at the same time and he would have a shiny fake  
23 ring.

24 Let's look now in detail at the pump. Let's take  
25 these one by one. At the top here, AscendEX. This is from

04HCEis2

Summation - Mr. Davis

1 6:26 to 6:40 p.m. We're talking about 14 minutes in time. He  
2 sells 74,000 USDC and he buys over a million MNGO. Look what  
3 happens to the price of MNGO on AscendEX at that time. It  
4 skyrockets, but he's not done. Look at FTX. This is the  
5 Bochenkova account. He sells a million USDC and buys  
6 16 million MNGO. Look what happens to the price on FTX, it  
7 skyrockets, but he's not done. He goes on Serum DEX and buys  
8 three and a half million MNGO and sells 750,000 USDC. What  
9 happens there? The price skyrockets. This is powerful proof.  
10 It shows you the manipulation in action. This is not what  
11 supply and demand looks like. This is what it looks like when  
12 one person is moving the price intentionally, and it does  
13 exactly what he intended – the price of the Mango perpetuals,  
14 his fake bet goes up over 1,000 percent during this time.

15 Let's look at these purchases again. Look at their  
16 timing, look at their size, look at when he makes them. He  
17 makes them within minutes of creating this fake bet. He is  
18 buying every last token he can, and it's absolutely clear while  
19 he's doing this, why he's pouring money into these tokens all  
20 on these three platforms. It certainly wasn't to buy MNGO  
21 cheaply. If he wanted to do that, he could have spread it out.  
22 And you know he didn't want these tokens anyway because we're  
23 about to discuss he sells them right after the fraud. He  
24 bought it like this so the price would go up on the platforms  
25 and that the Mango perpetuals price would also skyrocket. The

O4HCEis2

Summation - Mr. Davis

1 oracle sets the settlement price for his fake ring so his fake  
2 bet skyrocketed. This is not trading, this is not one person  
3 trying to move a price, this is pumping, and that's exactly  
4 what happened. It goes up over 1,000 percent in 25 minutes,  
5 1,000 percent in 25 minutes is not natural market forces. This  
6 is not legitimate trading. It's pumping a price so he can lie  
7 about the value of his collateral so that he can use that lie  
8 to steal. It's deceptive because it makes the perpetual look  
9 like it's really valuable when it's only being pumped up by the  
10 defendant's trading.

11 This is Government Exhibit 1309. This is another way  
12 of looking at the price manipulation. It shows the Mango perp  
13 price skyrocket at the time of the defendant's pump. That's  
14 this gigantic peak. This is the manipulation. This is the  
15 false price. This is the fraud in action. And you heard, it  
16 wasn't just the settlement price of the Mango perpetual that  
17 went up, but the prices of matched trades on Mango Markets  
18 skyrocketed, as well, going up over 700 percent in about 14  
19 minutes. This is Special Agent DeCapua's testimony. This is  
20 where he says the price of matched trades on Mango Markets also  
21 skyrocketed by 700 percent.

22 And none of this should really be surprising to you  
23 all at this point because this is exactly what the defendant  
24 said he was going to do in private. He said he was going to  
25 1,000 times the price. That's exactly what he did. He said, I

O4HCeis2

Summation - Mr. Davis

1 can 1,000 times it, not the market forces of supply and demand.  
2 Mr. Eisenberg, he's creating this fake price, he is lying about  
3 the value of the collateral. This is the manipulation at work.

4 How else do you know he was committing a crime and not  
5 engaged in any real trading? After he pumps it 1,000 percent,  
6 what does he do? He steals every single deposit on the  
7 platform. His long position just skyrocketed 1,000 percent in  
8 25 minutes.

9 Here's what he does next: Just minutes after opening  
10 the fake bet with himself and after he starts pumping the  
11 price, he clicked "borrow" and he starts borrowing against his  
12 inflated assets. This is the "borrow" button. This is from  
13 Government Exhibit 1011. You have to click this button to  
14 borrow funds. Mr. Sheridan testified yesterday that by  
15 pressing this button, you're representing to the platform that  
16 you are borrowing funds. This is how you do that, you click  
17 this button and you get to borrow. This is Mr. Sheridan's  
18 testimony from yesterday. At the bottom, you got to signal to  
19 the platform that you are borrowing funds if you want to borrow  
20 funds; correct? Answer, that's accurate.

21 And you all learned that the defendant was borrowing.  
22 This is Government Exhibit 1011 again. Remember there was a  
23 question-and-answer page we had gone over. One of those  
24 questions is how do I tell if I have borrows. At the bottom it  
25 says, look in the account tab, the balance table has a borrows

O4HCEis2

Summation - Mr. Davis

1 column. All spot borrows will show up there.

2 So let's take a look. This is Government Exhibit 914.  
3 This is the balances tab for the long position. Look at all  
4 these borrows. 50 million in USDC, 700,000 in MSOL, 700,000 in  
5 SOL. These are all borrows because the defendant borrowed  
6 against his fake bet.

7 How else do you know? Let's look at Government  
8 Exhibit 318. This shows the defendant was on the borrow page  
9 of Mango Markets for an hour during the crime.

10 But there's other ways too. We can look directly at  
11 the data. This is Government Exhibit 1002. Now, you might  
12 remember, yesterday, Mr. Burnett went over this with  
13 Mr. Sheridan and went through the increase in borrows before  
14 the defendant's trading and after the defendant's trading.  
15 This is that same spreadsheet. This spreadsheet shows a  
16 dramatic increase in borrows right around the time of the  
17 defendant's trades. These are all the borrows that the  
18 defendant took out. And it shouldn't be surprising. Remember  
19 the defendant's private chat? He said he was going to pull  
20 borrows. This is what he's talking about. That's exactly what  
21 he did.

22 You know who else testified that the defendant  
23 borrowed? Mr. Sheridan. This is what he said yesterday. So  
24 we can agree that there were borrows from Mr. Eisenberg taking  
25 money off the platform. Answer, yes, sir. That's right. The



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Summation - Mr. Davis

1 defendant represented to the platform he was borrowing. But he  
2 wasn't borrowing. This was a lie. The defendant was stealing.  
3 You know that because you hear that "borrowing" has a meaning.  
4 It did not mean steal.

5 Let's go back to the user guide for a second. This is  
6 one of the frequently asked questions from the users. What  
7 prevents someone from borrowing funds, withdrawing, and running  
8 away with it? In short, this is a borrow button, this is not a  
9 steal button. But the defendant did not have any intention of  
10 borrowing from this platform. And you learned how the process  
11 of borrowing worked.

12 Let's go to Government Exhibit 1011. Before you could  
13 borrow, Mango Markets did a credit check. They had to make  
14 sure you had enough collateral to borrow to open this position  
15 and support it. This screenshot is what happens when you  
16 borrow. There's this account health check and it takes a look.  
17 It says, like, what's your account value, what's your account  
18 risk, what's the leverage, what's the borrow value. That was  
19 step 1, a credit check on your account.

20 Mr. Sheridan yesterday talked about this, as well.  
21 Question, before it can do that, the system runs basically a  
22 credit check under account value to make sure you have enough  
23 assets there to support that borrow before you can withdraw it.  
24 The defense expert said, yeah, that's accurate. In other  
25 words, if you don't have enough collateral on the platform, the

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Summation - Mr. Davis

1 platform will not let you borrow. That is why the defendant  
2 had to lie about it. He had to fool the credit check. He had  
3 to make the program think that his collateral was worth a ton  
4 when it was secretly being inflated by his own trading. So  
5 that is a lie that allows him to open a borrow. But he also  
6 lies because he has no intention of maintaining collateral on  
7 the platform. You heard that you had to maintain collateral on  
8 the platform to support your borrow.

9 Let's go back to the user guide. This is Government  
10 Exhibit 1011. Just reading from the top. Once a position is  
11 opened, it must maintain a health ratio above 0%. This is  
12 important because the defendant had no intention of borrowing,  
13 he had no intention of maintaining collateral. He was stealing  
14 and running away with it.

15 Let's keep looking at the user guide. Remember, these  
16 are fully collateralized loans. That's what the user guide  
17 said. Under the hood, the Mango Markets risk engine permits  
18 users to take out fully collateralized loans against any  
19 deposited assets. Remember, the defendant did not intend to  
20 maintain collateral, he wanted to pull borrows and run away  
21 with the money.

22 So let's look at what he's doing. Let's look at the  
23 withdrawals and borrows he's making. This is Government  
24 Exhibit 1354. These are the borrows and withdraws from the  
25 long side of his Mango accounts. Look how concentrated this

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Summation - Mr. Davis

1 time is, from 6:29 p.m. to 6:45 p.m., he takes out about, I  
2 don't know, over 80 million in cryptocurrency. But this was  
3 not borrowing. He lied to take these borrows out. He tricked  
4 the credit check because his collateral was fake. He lied  
5 because he did not intend to maintain collateral. He lied when  
6 he clicked "borrow." That's the fraud right there. It's fraud  
7 because it tricks Mango Markets into letting him steal every  
8 single deposit on the platform.

9 All right. The defendant just took out - borrowed -  
10 80 million cryptocurrency tickets, but he doesn't stop there.  
11 Remember, he just pumped MNGO. He just bought a bunch of  
12 Mango, right, but that Mango is only pumped up because he's the  
13 one pumping it. He knows it's about to crash. He knows this  
14 isn't a genuine trade in MNGO.

15 This is Government Exhibit 1355. A few minutes after  
16 he starts withdrawing and borrowing, what does he do? He  
17 starts selling the Mango right back. He's dumping it, he's  
18 dumping it minutes after he purchased it.

19 Let's take these one by one.

20 At 6:47, he's selling Mango on AscendEX. At 6:48,  
21 he's selling 16 million Mango on FTX. At 6:49, he's selling  
22 20 million Mango on Serum DEX. This shows you manipulation  
23 because it shows you that the defendant was not making a real  
24 investment in MNGO. He wanted to unload his MNGO as soon as he  
25 cashed out his borrow, as soon as his lie worked. He held

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Summation - Mr. Davis

1 these tokens for what, less than half an hour? That's not  
2 legitimate trading. That's about milking every last dollar out  
3 of the con. And it's deceptive. He knows it's worth nothing,  
4 but he has to sell it before other people find out.

5 And look what happens to the price of Mango perpetuals  
6 after the defendant stops pumping. It crashes nearly 100  
7 percent. That's important. It shows you that the Mango perps,  
8 the perpetual price was propped up by the defendant's trading.  
9 It shows you that he knew the price was artificial because he  
10 tried to sell it before anyone could find out. That's what's  
11 deceptive about this. The defendant knows he's intentionally  
12 pushing up the price, but no one else does. The defendant  
13 knows the price is about to crash, but no one else does. The  
14 defendant is out there dumping this into the market, taking  
15 advantage of his deceit. You saw the gigantic increase, then  
16 you saw the crash. You saw the pump, then you saw the dump.  
17 That is manipulation.

18 But, ladies and gentlemen, he doesn't stop there.  
19 Remember, he's just drained his borrows from the long side.  
20 But remember, he's got another account, the short side. What  
21 does he do with the short side account after he withdraws from  
22 the long side? This is the short side of this fake bet, the  
23 supposed losing side. Minutes after he's done borrowing and  
24 withdrawing, he starts borrowing all he can from the short  
25 side. Same lie, same fraud. He steals as much as he can until

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Summation - Mr. Davis

1 every last deposit was stolen until there's nothing left. This  
2 slide right here, this is just pure greed. Even after  
3 squeezing every bit of cryptocurrency out of the long position,  
4 even after selling back all the Mango that he had purchased,  
5 the defendant is stealing every last deposit on the platform  
6 through his short position. He's draining everything.

7 So the defendant has just withdrawn over \$100 million  
8 in 30 minutes. What does he do next? He starts to move the  
9 funds around. Let's go to slide 53. This is Government  
10 Exhibit 1357.

11 So now we're a little bit later in the night. This is  
12 all happening within an hour. This is 7:01 p.m. At 7:01 and  
13 7:14, you see him move nearly 60 million in USDC to his Circle  
14 wallet in his own name right after the crime. But does it stay  
15 there? No, he immediately moves it to two additional wallets,  
16 sending 20 million USDC to one and 30 million to another. All  
17 of this happens within 30 minutes. Why is he moving 60 million  
18 in USDC so quickly? He knows his funds could be frozen at any  
19 time. He's trying to put distance between his funds and his  
20 fraud. He doesn't keep these in his Circle account with his  
21 name on them, he puts them in two different wallets, nearly  
22 30 million each. He's trying to protect his fraud proceeds.  
23 This is why he was using the name of Natalia Bochenkova while  
24 he put wallet after wallet between his name and the fraud. So  
25 he moves this money around.

O4HCEis2

Summation - Mr. Davis

1           Let's keep going. You heard testimony that a few  
2 hours later, there was a proposal on Realms. This is  
3 Government Exhibit 1003. There's a few big things to talk  
4 about with this proposal. This is like the repaid bad debt.

5           First off, let's read the first two sentences. "Hi,  
6 all. The Mango treasury has about 70 million USDC available to  
7 repay bad debt. I propose the following." This is an  
8 anonymous post. This does not say who the poster is. At this  
9 point, the defendant thinks he's anonymous. Look what he  
10 proposes. He proposes giving back a little bit of money, but  
11 he wants something in exchange. Look what he wants in  
12 exchange, an agreement that they will not pursue any criminal  
13 investigations or freezing of funds once the tokens are sent  
14 back. The defendant did not want to give money back to the  
15 Mango DAO out of the goodness of his heart. Think about this.  
16 If you executed a winning trade, you wouldn't just give money  
17 back. If you worked at a bank and you told your boss, hey, I  
18 just did a great trade. First step, I'm going to give half of  
19 it back. You're not going to be in that job very long, you're  
20 just not. He wants something. What's top of mind for him?  
21 The defendant knew he just committed a crime. He knew he could  
22 be prosecuted for it. He knew his funds could be frozen at any  
23 moment. He wanted to buy his way out of that.

24           And look at the timing of this proposal. You heard  
25 this was within hours of him committing the crime. He makes

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Summation - Mr. Davis

1 this plea for criminal immunity within hours of pulling off the  
2 con. This didn't just occur to him that he was committing a  
3 crime. He had known that for weeks. You saw his searches, you  
4 saw his chats, you saw his Tweets about people being prosecuted  
5 for doing market manipulation. It didn't just happen upon him  
6 that maybe he was committing market manipulation, he knew it.  
7 He was just trying to get away with it. He was just trying to  
8 buy it back with stolen funds.

9 All right. So, important takeaways. Still anonymous  
10 at this point, but this post fails.

11 So let's keep going on the timeline. This is  
12 Defendant's Exhibit 70. This shows you October 12th, 2022.  
13 And this is in UTC time, around 1:40 p.m. UTC time. So morning  
14 time that day, one posts an article that says the following:  
15 Scoop, who was the hacker that stole more than \$100 million USD  
16 from Mango Markets last night. Carl Stack has some answers.  
17 So the defendant sees this page. He thinks his disguise is  
18 blown. All his efforts to put distance between his name and  
19 his fraud have failed. His anonymous post on Realms failed.  
20 His attempt to purchase not freezing funds failed. Look what  
21 happens next. Remember, 1:40 p.m. UTC.

22 This is Government Exhibit 604. Within an hour of  
23 reading that post, the defendant books the next flight out of  
24 the country, a flight leaving that afternoon. He booked it  
25 within an hour of being identified. This shows you he knew he

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Summation - Mr. Davis

1 was committing a crime. He is escaping, he is fleeing. He's  
2 trying to get out of the country as fast as he possibly can.  
3 He's trying to do that so he doesn't get arrested for what he  
4 just did.

5 And you've seen the chats where he talks about his  
6 flight. This is Government Exhibit 110. Earlier in the chat,  
7 this is from November 2022, someone says hey, you received two  
8 packages and it was laying in the hallway. I dropped them  
9 inside your apartment. Mr. Eisenberg says, I ordered a bunch  
10 of food and then had to leave quickly. He sure did. He had to  
11 leave quickly because he thought he was just outed as the  
12 person behind the crime. And you all know exactly what's going  
13 on in his mind during this time, too. Let's look at his search  
14 history from October 13th.

15 This is Government Exhibit 121A. What's he searching  
16 for? Market manipulation, criminal; market manipulation,  
17 criminal; market manipulation, criminal elements; criminal and  
18 regulatory enforcement of market manipulation; individual  
19 indicted for market manipulation conspiracy. Of course he did.  
20 He just committed criminal market manipulation is and fled the  
21 country. It makes sense that he's Googling market  
22 manipulation, criminal, when he just did criminal market  
23 manipulation.

24 This is another chat. It says he's hanging out  
25 internationally until stuff blows over. This is Government



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Summation - Mr. Davis

1 Exhibit 112. Yeah, until stuff blows over. He had to dodge  
2 town. So he leaves the country.

3 But by the way, what's happening on Mango Markets  
4 during this time? What's happening when the defendant has fled  
5 the country with \$110 million in cryptocurrency, what's  
6 happening there? The platform is shut down. All the users'  
7 deposits, they're gone. So the defendant fled the country. He  
8 has all this stolen cryptocurrency, but no way to spend it, and  
9 he knew he just committed a crime. So he keeps using these  
10 stolen funds as leverage against Mango Markets.

11 This is the second proposal. Proposes giving a little  
12 bit more money back. But the key terms, an agreement not to  
13 pursue criminal investigations and no freezing of funds,  
14 they're still in there, they're still what the defendant cares  
15 about. You know from these proposals what he cares about.  
16 Keeping \$40 million and getting away with the crime.

17 So this proposal passes, and at the end of the day,  
18 the defendant keeps \$40 million, and the managing DAO pays  
19 \$40 million out-of-pocket to make users whole. The defendant  
20 got his \$40 million payday from this company, but he knew he  
21 just committed a crime. You know that because even after  
22 October 11th, he keeps searching for more about his crime.  
23 This is Government Exhibit 122A, in December of 2022, searching  
24 for an SEC described promoter with a Micro-Cap market  
25 manipulation scheme, searching for FBI surveillance; this is

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Summation - Mr. Davis

1 Government Exhibit 123, searching for Otisville prison, a white  
2 collar prison; this is Government Exhibit 124, looking up the  
3 list of Israel extraditions. He's looking all this up because  
4 he knew he committed a crime. He thinks he's being surveilled  
5 by the FBI because he just committed a crime. He wants to  
6 research a federal jail he might go to because he just  
7 committed a crime.

8 Use your common sense. If you think you did  
9 everything above board, are you researching particular jails  
10 that you might go to? Are you looking up FBI surveillance?  
11 That's what you do when you think you've committed a crime and  
12 you think you're about to get caught. So that's what happened.  
13 The defendant flew back to the United States and he was charged  
14 with these crimes.

15 We've gone through the defendant's scheme. I want to  
16 turn to the charges now. I want to be clear about something.  
17 After summations, the Judge is going to give you instructions  
18 on the law, and you should absolutely follow those. His  
19 instructions control, but I want to talk about them briefly  
20 with you now.

21 There are three crimes charged here: commodities  
22 fraud, commodities manipulation, and wire fraud. You've seen  
23 the key facts, but I want to go through the elements for each  
24 and show you why the defendant is guilty.

25 Let's start with Count One, commodities fraud. Here's

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Summation - Mr. Davis

1 a summary of the elements of commodities fraud. The first  
2 element asks: Did the defendant use manipulation, lies, or a  
3 scheme to defraud? You only need to find one, but you know he  
4 did all three. You know he manipulated the price of the Mango  
5 perpetuals, you know he lied when he said he was borrowing, you  
6 know he engaged in a scheme to defraud because the entire  
7 scheme was deceitful from the trade with himself to an  
8 artificial inflation of the price.

9 So let's go through the reasons you know he committed  
10 fraud. You saw the premeditation. He planned to pump and pull  
11 borrows. This was his own words describing how he was going to  
12 artificially influence the prices without the market knowing.  
13 This is not a legitimate trade. That's not how markets work.  
14 That's manipulation right there. He also said he was going to  
15 "pull borrows." But the defendant had no intention of  
16 borrowing, he was going to pull them, meaning he was going to  
17 strip them off the platform and steal them. That was a lie.

18 You saw that he created a fake bet with himself, a  
19 trade that makes no sense other than to commit a crime. This  
20 is deceptive because the market thinks that two users entered  
21 into this trade, that both users would enter into this trade  
22 because they thought it would be profitable. It's part of his  
23 scheme because it was just a tool to take money from the  
24 platform. The defendant was on both sides. There were not two  
25 counterparties to this trade. This is part of the scheme to

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Summation - Mr. Davis

1 defraud.

2           You saw a pump. He pumped the price of the perpetuals  
3 by 1,000 percent. And you saw how he did it. He took supply  
4 and demand into his own hands. He made the market think that  
5 the price of Mango perpetuals were going way, way up for  
6 legitimate reasons, but it wasn't legitimate at all. It was  
7 just him making illegal buy after illegal buy. You saw he  
8 pumped the settlement price for those perpetuals. You saw he  
9 pumped the market price for those perpetuals. This is the  
10 manipulation.

11           You saw him lie about his identity. You saw he did  
12 this crime behind a Ukrainian woman named Natalia Bochenkova.  
13 The defendant knew how to create an FTX account in his own  
14 name. He had accounts in his own name before, but he didn't  
15 use his own name here. He pretended to be someone else.

16           He lied about his collateral. He pumped it to make it  
17 look like it was worth something so valuable, and he did this  
18 to trick the Mango Markets credit check. He did it so that he  
19 could borrow, to make it look like his assets were valuable,  
20 but that was a lie.

21           He lied about borrowing. He wasn't borrowing, he was  
22 just stealing. He did not intend to maintain collateral on the  
23 platform. It was all a lie, a lie that allowed him to withdraw  
24 every single users' deposit.

25           And you saw him trying to buy his way out, trying to

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Summation - Mr. Davis

1 extort Mango Markets for a claim of criminal immunity. This  
2 was all part of the scheme.

3 Each piece of evidence, separately and together, they  
4 show the defendant's manipulation, deception, and lies, and it  
5 shows you how he used them to steal every users' deposits. And  
6 you heard time and time again that the defendant's fraud, it  
7 mattered, it was material. You know it mattered because  
8 without the deception, without the defendant inflating the  
9 price and lying, the whole con fails. You saw that Mango  
10 Markets does this credit check before it lets you borrow. If  
11 he did not artificially inflate his perpetuals, lie about the  
12 value of his collateral, he would not be able to borrow  
13 100 million, he would not have tricked the credit check. It  
14 was the lie that allowed him to do that. That's materiality  
15 right there. So he wouldn't have even begun to borrow without  
16 the scheme because he would have failed to pass the credit  
17 check.

18 But he also would not be able to borrow \$100 million  
19 without the fraud. The only reason he's allowed to borrow that  
20 much is because he pumped the price by that much. This is  
21 because the amount you could borrow on Mango Markets depended  
22 on the health of your collateral. So the more he pumped, the  
23 more he could steal. That's materiality right there. If he  
24 pumped it 0%, he would have gotten nothing.

25 You also know that the lie about borrowing mattered.

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Summation - Mr. Davis

1 If he didn't click "borrow," the whole scheme fails. The  
2 program literally would not give him any money. He would not  
3 be able to borrow \$100 million unless he made the borrow lie.  
4 That's materiality right there. So not only did this scheme  
5 matter, it had to matter for it to work. That's materiality.

6 But you also heard from witnesses. You heard from  
7 witnesses that this scheme mattered. Here's Mr. Tonkin when  
8 he's asked, would it have mattered to you if you knew someone  
9 was borrowing from the platform without intending to maintain  
10 collateral or pay interest. He says, yes, because if somebody  
11 borrows from the platform and they don't effectively intend to  
12 repay the money or keep collateral to the extent of the wider  
13 depositor's pool position, of course that puts my funds at  
14 risk. This is Mr. Tonkin again. Would it matter to you if you  
15 knew that a person was intentionally moving the price of  
16 perpetuals on Mango Markets. Answer, it would matter, yes.  
17 Why would it matter to you. Because obviously that puts at  
18 risk my funds if someone can manipulate that price. It puts my  
19 funds at risk as a depositor.

20 Here's Mr. Shipe. As a contributor, would it matter  
21 if someone was borrowing from the platform without the intent  
22 to maintain collateral to liquidate. Yes, it would. What kind  
23 of problems could it cause. It could cause deplete the  
24 insurance fund, socialize losses, users would lose funds.

25 Here's Brian Smith. Why would it matter to you if

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Summation - Mr. Davis

1 someone was borrowing from the platform without intending to  
2 maintain collateral on the platform. Because all assets on a  
3 platform are aggregated across users. So if there's a scenario  
4 where one user defaults and the protocol incurs a loss, that  
5 can result in cascading losses to all users on the platform.

6 And of course it would matter to depositors on the  
7 platform. Why would none put a single deposit on a platform if  
8 it could be stolen in an instant. And you know it mattered to  
9 Mango Markets because right after the defendant withdrew all  
10 the funds, the platform shut down. It stopped working.

11 So that's element 1. Let's talk about element 2, that  
12 the scheme was in connection with a swap. So the Judge is  
13 going to provide you with the definition of what a swap means  
14 in this case and how to determine whether a Mango perpetual is  
15 a swap.

16 But for now, let me provide this: A swap includes any  
17 agreement that transfers in whole or in part the risks of  
18 changes in value of the things underlying a swap. Swap just  
19 transfers the risk of the things underlying the swap. And you  
20 heard about Mango perpetuals. Mango perpetuals are just a bet  
21 on how Mango will perform compared to USDC. One side bets that  
22 Mango will go up compared to USDC, the other side bets that  
23 Mango will go down compared to USDC. So perpetuals just  
24 transfer the risk of changes in value between Mango and USDC.

25 This is Government Exhibit 1827. This shows you how

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Summation - Mr. Davis

1 this works. If someone has a long position in a Mango  
2 perpetual and Mango goes up relative to USDC, they're winning  
3 their bet.

4 This is 1828. This shows the reverse. If the long  
5 position sees that the value of Mango goes down relative to  
6 USDC, the long position is losing the bet. This instrument is  
7 just trading the risk values between Mango and USDC. And you  
8 saw that when you purchased a Mango perpetual, it's priced in  
9 USDC.

10 And you heard the defense expert explain it exactly  
11 the same way. This is what Mr. Sheridan said yesterday. If we  
12 showed the price of a Mango token relative to USDC to go down,  
13 the long position became lost funds or was in a loss state.  
14 For the short position, if the price of the Mango token  
15 relative to USDC went up, the short position similarly lost  
16 assets and became a lost state. This is just describing how  
17 the Mango perpetuals transfer the risks between Mango and USDC.  
18 He nailed it. That's a swap right there.

19 So the perpetuals are swaps. We expect the Judge also  
20 to instruct you that you need to find at least one of the two  
21 following things to find that this swap is covered by the  
22 commodities laws. It's listed here on slide 81. First, that  
23 Mango perpetuals are based in part on the value of USDC and  
24 that USDC is a currency or financial or economic interest, or  
25 property of any kind. Or second, that Mango perpetuals are



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Summation - Mr. Davis

1 based in part on any rate, index, or quantitative measure other  
2 than the price of MNGO or a narrow-based security index.

3 Let's take the first one, whether Mango perpetuals are  
4 based in part on the value of USDC. That's what we just talked  
5 about. Perpetuals are based on the relative value of Mango and  
6 USDC. And you know, and you've heard throughout this trial,  
7 that USDC is a currency, it's a cryptocurrency. It's also  
8 property of any kind. People find it very valuable. Indeed,  
9 Mr. Sheridan owns some. This is what he was asked yesterday.  
10 Do you own any cryptocurrency. Yes. What tokens, generally,  
11 which tokens do you own. I have Bitcoin, Ethereum, Solana, and  
12 USDC.

13 So it says it all right there, USDC is a currency or a  
14 financial or economic interest, or property of any kind. So  
15 that first one's checked. As to the second one, we know that,  
16 too. The second one asks, is Mango perpetuals based in any  
17 part on any rate.

18 And we learned in this trial about the funding rate  
19 for Mango perpetuals. This is Government Exhibit 1011. This  
20 talked about the funding rate for Mango perpetuals. It shows  
21 that there's a stream of payments based on what's called the  
22 funding rate. It says it right there, it's a funding rate.

23 And you learned from Mr. Jain how the funding rate is  
24 calculated basically by comparing the order book mid price to  
25 the price of contracts on Mango Markets to the oracle price,

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Summation - Mr. Davis

1 and that determines who's paying the funding rate to whom. And  
2 the big takeaway is it's a funding rate. It's a rate. That's  
3 all you need to find.

4 (Continued on next page)

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Summation - Mr. Davis

1 MR. DAVIS: That's the first two elements, but I want  
2 to talk briefly about the in-connection-with requirement.

3 The Mango perpetuals is a swap. The next question is  
4 whether the scheme necessarily involved the Mango perpetuals.  
5 And of course it did. The whole point was to pump the price of  
6 the perpetuals so that he could use it as fake collateral to  
7 steal from the platform. This scheme does not work without the  
8 Mango perpetuals. If there are no perpetuals, there is no con.  
9 If there are no perpetuals, he cannot steal. So the scheme is  
10 in connection with the swap.

11 Let's turn to the last element, that the defendant  
12 acted knowingly, willfully, and with the intent to defraud.

13 This really boils down to whether the defendant knew  
14 that his manipulative trading was against the law, and it is  
15 clear as day the defendant knew he wasn't allowed to manipulate  
16 the price of Mango perpetuals to steal all the money on the  
17 platform.

18 For starters, he had sued someone for price  
19 manipulation. If it was wrong for the people that the  
20 defendant sued to manipulate prices, then the defendant  
21 certainly knew it was wrong for his own trading to manipulate  
22 prices.

23 But there is more. You saw him search the statute of  
24 limitations for market manipulation before the fraud. It shows  
25 you he knew about these laws. It shows you he knew this was

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Summation - Mr. Davis

1 unlawful, and he knew why, because manipulating the price is  
2 deceptive. It makes assets look valuable when they are not.  
3 He looked up people who were convicted of the same thing. He  
4 tweeted about prosecutions for market manipulation. This all  
5 shows that he knew what he was doing was unlawful.

6 He searched for market manipulation after the fraud.  
7 Even in the days after the fraud, he kept searching for market  
8 manipulation and fraud. This is because he just committed that  
9 crime.

10 He hid his identity. You saw him use a fake name.  
11 You saw his disguise. He didn't pump under his own name. You  
12 saw him pump under Natalia Bochenkova's name. You saw him buy  
13 a woman's identity of the Internet.

14 He hid his money. You saw him put wallet after wallet  
15 in between his own account and the crime and then, as soon as  
16 the crime was done, he sent it to additional wallets.

17 You saw the extortion for this no-criminal-referrals  
18 issue. You saw him seek criminal immunity from the Mango DAO  
19 within a few hours of committing the crime. That's because he  
20 knew he just did something against the law.

21 You saw his private chats, the chats where he talked  
22 about a thousand timesing the price. That is not normal market  
23 activity. No one person can thousand times the price unless  
24 they are committing crime.

25 You saw him flee the country within an hour of being

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Summation - Mr. Davis

1     outed. You saw him evade arrest, and you saw the text where he  
2     had to leave in a hurry. This shows you he knows what he did  
3     was against the law.

4             You saw him look up a white-collar prison because he  
5     just committed a white-collar crime. You saw him search for  
6     FBI surveillance because he thought he was under FBI  
7     surveillance for the crime he just committed. And you saw him  
8     look up Israel extraditions, because he knew he had just  
9     committed a crime.

10            The defendant knew what he was doing was against the  
11    law. He just didn't let it stop him.

12            Those are the three elements of commodities fraud, a  
13    manipulative scheme, and deception in connection with the swap  
14    that the defendant knew was against the law and that's the  
15    crime, that's what the defendant did. That's Count One.

16            Let's go to Count Two, commodities manipulation. Now,  
17    this count is different. It focuses on the manipulation of the  
18    swap, of the Mango perpetuals. We already went over the swap  
19    definition, but I am going to go through the other elements  
20    here.

21            For Count Two, the defendant is guilty if he intended  
22    to manipulate the price of the swap. This count is focused on  
23    the manipulation. Let's talk about these elements, that the  
24    defendant had the ability to influence the price, that an  
25    artificial price existed, that the defendant caused that

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Summation - Mr. Davis

1 artificial price, and that he specifically intended to  
2 manipulate it.

3 Let's go through the reasons you know he committed  
4 manipulation.

5 The first one, he pumped the price by a thousand  
6 percent. First way you know it was successful. You saw that  
7 increase was caused by the defendant's pumping in a short time  
8 span. Look at the size of his positions, the size of his buys  
9 that day. Look at the timing of the trades. This all shows he  
10 had the ability to cause a fake price, and he did cause it.  
11 The 1,000 percent was not natural forces of supply and demand.  
12 It was one person creating a fake price. That's manipulation.

13 You also saw where he pumped the price. It was the  
14 exact three exchanges that determined the price of the  
15 perpetuals. It shows you his intent. This wasn't an accident.  
16 His intent was to pump the price of his swaps on Mango Markets  
17 and that's why he picked FTX, AscendEX, and Serum DEX.

18 Also look at the concentration of the trading. It all  
19 happens within minutes. This didn't spread out over weeks or  
20 days. It's within 20 minutes. He does it this way to have the  
21 biggest possible impact on the price. He does it to deceive  
22 others to think that the price is going way, way up in this  
23 short amount of time, when it's only moving because he moved  
24 it.

25 You know it's artificial because what happens next?

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Summation - Mr. Davis

1 The price crashes when he stops pumping it. This was the slide  
2 we looked at earlier when he starts dumping the Mango back into  
3 the market. It shows you that the thousand percent increase  
4 was not supply and demand. It was just the defendant's illegal  
5 pumping. The whole point is to send a false price to Mango  
6 Markets, that his swaps were worth something when they were  
7 not. And when he stopped, when he stopped buying, the price  
8 crashed. That's an artificial price. That shows you the price  
9 wasn't real. It shows you that he caused it and it was just  
10 him propping it up. It shows you his intent.

11 Another way you know. The exact moment he starts  
12 pumping, what does he do? He starts borrowing from the  
13 platform. He steals all of the money. This shows you what his  
14 intent was. This wasn't a genuine investment. He had to lie  
15 about his collateral. He needs to pump the perpetuals so he  
16 can steal these funds. This shows his intent to manipulate.

17 Number 6. After withdrawal of the funds, what does he  
18 do? He dumps the Mango. It shows you this wasn't a genuine  
19 investment. These were not legitimate trades. He sells it  
20 back minutes after buying. He knows that it's worth nothing,  
21 that the price is artificial, so he sells it all back, trying  
22 to get rid of it.

23 Finally, how else do you know? Just go back to 502A,  
24 the private chat. He says he was going to pump it, he says he  
25 was going to do it a thousand times. That's exactly what

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Summation - Mr. Davis

1 happens. He is telling you his intent. That is not market  
2 activity. That's cheating.

3 One last thing on this count, Count Two. The judge  
4 will instruct you that even attempting to commit price  
5 manipulation is enough to convict the defendant of Count Two.  
6 And you know the defendant attempted to manipulate the price  
7 because he said that's what he wanted to do, to pump it a  
8 thousand times, and he spent millions of dollars pumping the  
9 price. All the evidence we talked about also proves that he  
10 attempted manipulation as well.

11 Let's turn to the last count, wire fraud.

12 I am going to summarize it briefly here, but one big  
13 place to start is, this doesn't involve or require an  
14 involvement of a swap. This is just a scheme to obtain money  
15 by lies with the specific intent to defraud. It's just a  
16 scheme to defraud and obtain money.

17 We have talked about the defendant's deceptions and  
18 lies, and they are all applicable here, but I want to focus on  
19 just two. The first is the fake collateral. The second is the  
20 borrow lie.

21 Remember, the program ran this credit check before  
22 they let someone borrow. The defendant lied to trick that  
23 credit check. He made it seem as if his collateral was worth a  
24 thousand percent more than in reality. That was a lie.

25 This is that account health check screen again, 1011.



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Summation - Mr. Davis

1 Without that lie, he would not be able to take out any  
2 money. He would not be able to borrow.

3 He also lied when he clicked borrow. He had no  
4 intention of maintaining collateral at all, and you heard over  
5 and over again why these lies mattered. They mattered because  
6 he could not take out \$110 million without them. If he fails  
7 the credit check, he can't borrow them. If he doesn't pump the  
8 collateral so much, he can't take out 110 million. If he  
9 doesn't click borrow, he can't borrow.

10 But you also heard from witnesses, we talked about  
11 them before, Mr. Shipe, Mr. Smith, and Mr. Tonkin.

12 One other thing on this. You also saw his intent,  
13 that he was specifically trying to get all the users' funds off  
14 the Mango Markets. He took all their money. He took every  
15 single user deposit. The whole point of the scheme was to  
16 drain the platform. A scheme to defraud is at the core of this  
17 conduct.

18 The last element was an interstate wire. You remember  
19 when Mr. Farrell from AscendEX talked about that AscendEX has  
20 employees in New York City. And you learned that each day  
21 AscendEX employees do what's called a trade reconciliation  
22 report where they reconcile the trades in New York City. And  
23 these New York City based employees do those reports, and a  
24 finance team reviews them as well.

25 He said it's roughly akin to what a broker does in a

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Summation - Mr. Davis

1 securities market. You even saw the deposit confirmations sent  
2 to the defendant with this New York City based address.

3 The takeaway from this is, when the defendant pumped  
4 on AscendEX and he made those trades, when he was in Puerto  
5 Rico, those wires had to travel to New York City. They had to  
6 travel there for the trade reconciliation report. That's a  
7 wire that started with the defendant's trading in Puerto Rico  
8 and ended up in New York, so that's an interstate wire. That's  
9 wire fraud. The defendant lied to get money from the users of  
10 Mango Markets, and he used interstate wires. The defendant is  
11 guilty of Count Three as well.

12 One last note. The judge is also going to instruct  
13 you on venue. Follow his instructions. Two quick things to  
14 point out.

15 First, venue is a preponderance of the evidence. It's  
16 a different standard of proof.

17 Second, you need only find that any act in furtherance  
18 of the crime occurred in New York City. So these AscendEX  
19 wires, the wires that the defendant sent when he made these  
20 deposits that arrived in New York, they satisfy the venue  
21 requirement as well, that any act in furtherance of the crime  
22 occur here in New York.

23 I am going to sit down. Before I do, there is  
24 something I want you to keep in mind. As you are thinking  
25 about this case, as you are trying to get to the truth, come

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1 back to the defendant's words and the defendant's actions. The  
2 private chats where he said he is going to pump the price by a  
3 thousand percent, the gigantic perpetual that he traded with  
4 himself, the millions and millions of dollars of illegal trades  
5 he used to pump the price, his lies about borrowing, his  
6 searches for the statute of limitations for market  
7 manipulation, and his flight from the country, after stealing  
8 \$100 million, it's time to hold the defendant accountable. The  
9 defendant is guilty.

10 Thank you, your Honor.

11 THE COURT: We will take a brief recess until 11:30  
12 and come back.

13 Members of the jury, make sure you do not discuss this  
14 case or what you have heard today with each other. No  
15 research. As I have told you many times, don't look anything  
16 up. And we will be back in 15 minutes for the defendant's  
17 closing argument.

18 All rise for the jury.

19 (Jury not present)

20 THE COURT: One issue with respect to the laptop that  
21 goes back to the jury. Make sure that the demonstratives are  
22 not on that laptop. You may have already done this, but the  
23 demonstratives should not be on the laptop; only the admitted  
24 exhibits.

25 Any other issues to take up before the defendant's

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Summation - Mr. Klein

1 closing?

2 MR. DAVIS: None from the government, your Honor.

3 MR. KLEIN: None from the defense, your Honor.

4 THE COURT: OK. We will be back at 11:30.

5 (Recess)

6 THE COURT: Are we ready to proceed?

7 MR. KLEIN: Yes, your Honor.

8 THE COURT: Mr. Hernandez, let's get our jury.

9 THE DEPUTY CLERK: Yes, your Honor.

10 (Jury present)

11 THE COURT: We will now proceed to the defendant's  
12 summation.

13 Mr. Klein, when you are ready.

14 MR. KLEIN: Good morning, ladies and gentlemen.

15 Avraham Eisenberg did not commit any crimes. As my  
16 colleague, Mr. Talkin, told you at the start of this case, he  
17 engaged in a successful and legal trading strategy, one in  
18 which he put his own money at risk. This case isn't about  
19 whether Mr. Eisenberg took advantage of the Mango Markets  
20 platform trading opportunities. It's about whether he  
21 committed crimes, and he did not.

22 Both prosecutors talked to you about this con man with  
23 the fake diamond ring. You remember that in the opening  
24 statement and from the prosecutor who just spoke to you. But  
25 you have now sat here for over a week and heard the evidence,

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Summation - Mr. Klein

1 testimony, and you know that's not the case, because what the  
2 prosecutors have glossed over are some very important facts in  
3 evidence. This is not how things worked here, how they have  
4 described them, not even close.

5 Let's start with the con man in the prosecutor's  
6 analogy. On Mango Markets you don't communicate with anybody.  
7 No one says: Who are you? Why are you here? What are you  
8 trying to do? Are you trying to maintain collateral? Are you  
9 intending to repay this? The program works automatically. It  
10 doesn't care who you are. It doesn't even care if you trade  
11 with yourself. This is fully permissible on the program.

12 The evidence shows that my client, Avi -- and I'm  
13 going to call him Avi because that's what people call him who  
14 know him -- fully complied with the Mango Markets smart  
15 contracts. Also, he didn't borrow \$110 million. That is  
16 wrong. The evidence does not show that. I am going to walk  
17 you through why.

18 But at the start I am going to tell you what happened  
19 is, he did take some money off the platform. He did withdraw  
20 it. He withdrew his own capital, 5 million in USDC that came  
21 from Circle, and then he took profits, approximately \$50  
22 million. That wasn't a borrow. And the rest of the money he  
23 returned shortly after.

24 I want to talk to you about what this trial is and is  
25 not about. The prosecutor mentioned Avi is brazen, he is

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Summation - Mr. Klein

1 greedy. Those aren't crimes. And Avi is not charged with  
2 hacking into Mango Markets. I want to be clear. You are going  
3 to hear -- you have heard no evidence of that, and the  
4 prosecutors aren't claiming that. By that I mean, this isn't a  
5 case about someone surreptitiously changing the code or  
6 accessing the protocol unauthorized. That's not what this case  
7 is about. No one is going to dispute that. This case isn't  
8 also about violating terms of service. The judge will instruct  
9 you that that's not illegal, even if my client did it, which we  
10 dispute.

11 This case also is not about profiting improperly on  
12 the three exchanges thanks to his Mango token trading. The  
13 charges center on something different. They center on Mango  
14 Markets and the Mango perpetual.

15 Those charges that you heard from the prosecutor are  
16 commodities fraud, Count One; commodities manipulation, Count  
17 Two; and wire fraud, Count Three. And there are four alleged  
18 misrepresentations that the prosecutors need to prove. One is  
19 identity and location, two is taking both sides of the swap,  
20 that's the long and the short, three is the intent to borrow,  
21 that's the \$110 million, and four is market manipulation.  
22 That's market manipulation on Mango Markets. Avi isn't guilty  
23 of any of these crimes, nor did he make any of these  
24 misrepresentations.

25 What I am going to do next is, I am going to walk you

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Summation - Mr. Klein

1 through some key legal concepts that the judge is going to  
2 instruct you on. And the judge, what he says goes. I am going  
3 to summarize some of them. Then I am going to talk about the  
4 testimony and exhibits, things like the terms of service, Avi's  
5 trades, the alleged \$110 million borrow, and his alleged  
6 flight. Lastly, I am going to talk about the three counts and  
7 go into why he is not guilty of violating any of those charges.

8 Let's start with some basic legal concepts that the  
9 judge is going to talk to you about. I want you to keep these  
10 in mind as we walk through the evidence. They are key to how  
11 you look at the evidence. They are a lens for which you should  
12 see the evidence.

13 The first one is direct and circumstantial evidence.  
14 Direct evidence is Mr. Tonkin, the nice man from England who  
15 came here, testifying that all his funds were returned. That's  
16 direct evidence. Circumstantial evidence is something like Avi  
17 returning to the United States in December, not knowing that he  
18 was going to be arrested. That shows he didn't think he had  
19 done anything wrong.

20 Let's talk about inferences for a moment. That's when  
21 you look at a bunch of evidence and say, what can I learn from  
22 this? What can I draw from it? What does it help explain to  
23 me? The prosecutors want you to draw every inference in every  
24 instance against Avi. You don't need to do that, you don't  
25 have to do that, and the evidence does not support you doing

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Summation - Mr. Klein

1 that. You are allowed to draw favorable inferences, and you  
2 can and should.

3 Avi is cloaked in the presumption of innocence. Let  
4 me give you an example. After his Mango Markets trades and  
5 before flying back from Puerto Rico, where, again, he didn't  
6 know he would be arrested, Avi sued two of those exchanges.  
7 You heard about that. He sued AscendEX and he sued Circle to  
8 try to get his funds back. It's fair to infer that he would do  
9 that for two reasons. One, he didn't think he committed any  
10 crimes; two, he believed he had lawfully obtained those funds.

11 Let's talk for a moment about reasonable doubt. The  
12 burden of proving Avi committed the three charged crimes is a  
13 high one and it's on the government, it's on the prosecutors.  
14 I am not saying it's impossibly high, but it is a fundamental  
15 part of our justice system.

16 After I sit down, a prosecutor is going to talk to you  
17 next. That prosecutor may tell you, ladies and gentlemen,  
18 every day in courts around the country people are on trial and  
19 people are convicted under that same standard. Guess what?  
20 Every single day people are acquitted too.

21 At the start of this case the prosecutor asked you to  
22 pay attention, listen to the judge's instructions, and use your  
23 common sense. The defense has wanted and continues to want you  
24 to do those exact same things, but you need to do it with two  
25 things in mind, my client's presumption of innocence and the



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Summation - Mr. Klein

1 high burden of proof the prosecutors have.

2 Let's turn and start talking about some of the  
3 testimony and exhibits you saw here. I am going to try to do  
4 this chronologically. I am going to start with these three  
5 exchanges and its terms of service. I brought my reading  
6 glasses.

7 Before I get to those, I am first going to talk to you  
8 about what people saw when they went to Mango Markets. This  
9 came in through the government's first witness, Mr. Smith. The  
10 defense put this in. You learned from Mr. Sheridan and  
11 Mr. Smith about this. This is the opening thing you saw when  
12 you went to Mango Markets version 3, the version my client was  
13 using. This is something we can all read and understand. It's  
14 clear as day. This is an unaudited software. Use at your own  
15 risk. Check. I understand and accept these risks. You had to  
16 check that box before you went onto Mango Markets. This sets  
17 people's expectations. This goes to directly to what people  
18 who are using this platform would think, and it goes to also  
19 what my client would think, what his expectations would be and  
20 his intent in conducting these transactions. Use at your own  
21 risk.

22 Now let's compare this with the terms of service you  
23 saw and heard on FTX, it's one of those exchanges, AscendEX,  
24 and Switchboard.

25 Before I go there, I wanted to let you know that this

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Summation - Mr. Klein

1 is the most important set of terms of service or disclaimer,  
2 whatever you want to call it. This is what people saw who used  
3 Mango Markets. Again, that's the center of these charges, is  
4 what happened on Mango Markets, not these other exchanges. You  
5 should give this the most weight.

6 Let's turn to these other terms of service.

7 Pages and pages of legalese. You only heard companies  
8 come in here and talk about them. You didn't hear from any  
9 users that said: I read and understood this. This is the one  
10 where both myself and Mr. Farrell had to pull out their glasses  
11 to read.

12 There is one exception about reading and understanding  
13 the terms of service, and I'll discuss it with AscendEX. You  
14 did learn, and I mentioned it earlier, that my client sued  
15 AscendEX and brought that arbitration in Singapore. So we  
16 agree, he read these after the fact. Once they had frozen his  
17 funds, just like anybody, use your common sense, the company  
18 freezes your funds.

19 He started looking around saying: How do I get these  
20 out? We don't dispute that he then looked at these terms of  
21 service. But it doesn't mean that he looked at them before or  
22 knew about it, and there is no evidence that he did, none in  
23 the record.

24 It's also worth noting in these terms of service that  
25 AscendEX had what it talks about with crypto. This is

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Summation - Mr. Klein

1 consistent with the Mango Markets opening page. There is a  
2 high degree of risk. This is new and improving. There is  
3 frequent price volatility, a lot of bad stuff, a lot of  
4 volatility happens here.

5 Let's now talk about Switchboard. You may recall  
6 Switchboard is the company that provided the price oracle for  
7 Mango Markets. This is their terms of service, undated, pages  
8 and pages and pages and pages of legal documentation, legalese.  
9 You have no direct evidence that anyone on Mango Markets saw  
10 and read these. At most, you have that Avi visited a portion  
11 of a website for this called the Explorer. But there is no  
12 evidence that these terms of service were posted there or that  
13 he saw them. The fairest inference of this is these didn't  
14 matter to anybody because no one knew about them. Don't let  
15 the prosecutors convince you otherwise.

16 Now let's talk about FTX. There is an example of  
17 where he went to the Switchboard. That's GX-117A. You see we  
18 put the exhibit numbers here to help you when you take your  
19 notes.

20 This is FTX's terms of service. That's half of them,  
21 half. Some of it is in a foreign language. A witness from  
22 FTX, a former employee, came, didn't talk about these, didn't  
23 say anybody had seen them. The government called an FBI agent.  
24 Didn't know if anybody had seen them, didn't know if FTX even  
25 cared to enforce them. You should disregard these terms of

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Summation - Mr. Klein

1 service, all of them. They didn't put anybody on notice, and  
2 you also are going to learn, the judge will instruct you, that  
3 violating terms of service is not a crime. It's not a crime.

4 Let's go back to where we started, the opening page of  
5 Mango Markets version 3, the place where this trading happened  
6 of the perpetual. Use at your own risk. This, again, set  
7 everyone's expectation.

8 Now I want to talk to you about what happened next.  
9 There is a version 4 later. That's not connected -- that's not  
10 where Mr. Eisenberg or Avi traded, but after this incident  
11 Mango Markets put up longer, more legalese. They actually had  
12 terms of use. Now they are called terms of use. I'm calling  
13 terms of service. These came in March 6, 2023.

14 There is a big difference in what you might be  
15 thinking if you saw the one versus the other and that's  
16 important here, ladies and gentlemen. It's important what my  
17 client might have in his head. That's critical to deciding  
18 whether he is guilty of anything. It's also critical to what  
19 other users on the platform would think.

20 Look at 1010 versus DX-2. The defense put both of  
21 these in. Don't let the government have it both ways here and  
22 say, hey, our terms of service that we like matter, but these  
23 other ones or the lack of them don't. You should look at the  
24 terms of service or the lack of them on Mango Markets. That's  
25 what this case is about.

O4HMEIS3

Summation - Mr. Klein

1 Always keep in mind that Avi is cloaked in the  
2 presumption of innocence, and the government has got to prove  
3 things beyond a reasonable doubt.

4 Now I want to talk to you about the trading that  
5 happened on AscendEX, FTX, and Serum. That's the trading in  
6 the Mango token. I think we know this, but I just want to be  
7 clear, that's completely different from the perpetual that was  
8 traded on Mango Markets. Those are two completely distinct  
9 things.

10 So the trading on these exchanges was in the Mango  
11 token and the trading on the Mango Markets was in the  
12 perpetual. The prosecutor made a big deal with pumping, about  
13 my client using that word. But for Count Two that, quote, pump  
14 that they claim, that was on a different market. The market we  
15 are focused to in Count Two is the Mango Markets and any  
16 alleged pump would have occurred on these three exchanges, not  
17 on Mango Markets. For Counts One and Three, none of this is  
18 material, and those are the counts of commodities fraud and  
19 wire fraud.

20 I'll tell you why. Because you heard how the protocol  
21 was set up. It was permissionless. It didn't care who you  
22 are, it didn't rely on you to tell it anything, it didn't care  
23 why you were doing anything on it, and it didn't care what that  
24 price is that was coming in off the oracle. All it did was  
25 just input that price. It didn't ask, is this price accurate

O4HMEIS3

Summation - Mr. Klein

1 in some way, or is this price because of your trading on  
2 another offsite exchange? It didn't ask any questions. It  
3 literally took an input and used it. It's completely  
4 automatic. No one could have done anything differently. It  
5 goes straight to the heart of materiality.

6 Now let's talk about the trades for a minute. We are  
7 not disputing that Avi did those trades. That is not an issue  
8 here. We are not disputing that he tried to move the price up.  
9 He did try, and he did move it up on certain of them.

10 Now, the government called two witnesses from FTX or  
11 about FTX, the general counsel for AscendEX, and no one from  
12 Serum. In fact I didn't even hear about them. I don't know  
13 what it's called. No one testified who traded with Avi on  
14 those exchanges. No one testified that they would have done  
15 anything differently on those exchanges. You heard no evidence  
16 about that. You heard evidence from people on Mango Markets,  
17 but you didn't hear anybody from FTX who traded with them,  
18 anybody from Serum, or anybody from AscendEX, and that's  
19 important to keep in mind.

20 Let's talk about the FTX count for a moment, setting  
21 aside their ridiculous, and I submit to you, completely  
22 ridiculous 60-page terms of service. We have no evidence  
23 anyone saw or were they ever enforced. What happened on this  
24 exchange, there was trading done, but you learned about how  
25 that trading was done. You saw a contract for purchase. I

O4HMEIS3

Summation - Mr. Klein

1 submit to you this shows my client purchased the company that  
2 had an FTX account that was then used, and that gave him  
3 permission.

4 I want to show you one other thing. That's 116A.

5 This is trading data from FTX. Now, there was a lot  
6 of talk about the price and it was pumped up. Guess what the  
7 price was a year before? 44 cents. This price was high  
8 before. This price didn't come out of nowhere. Avi, when he  
9 traded, only got the price from three cents to 14 cents. A  
10 year before this price was a lot higher.

11 Let's talk about AscendEX. You remember Mr. Farrell,  
12 he is the guy who works at a New York City company called HDL  
13 Consulting that has some arrangement for this Romanian  
14 exchange. He talked to you about this user information page  
15 and KYC level zero. You learned that KYC is know your  
16 customer. And we can all know, from our experience and our  
17 common sense, zero is the lowest number.

18 This is a nothing. They asked for nothing,  
19 essentially. You could input, and he told you this, your  
20 email, any email. In this case, it's an email -- I'm trying to  
21 find it. It's highlighted up there on the upper left.  
22 Opaque.com.

23 You learned from a special agent who came and  
24 testified, Ms. LaGrange, that that is a masked email. My  
25 client used masked emails. We don't dispute that. He used one

O4HMEIS3

Summation - Mr. Klein

1 to purchase his United Airlines ticket, and he used it in his  
2 own name. And you also learned you can use masked emails for  
3 legitimate purposes. There is a reason to have them.

4 The only other thing that was required here was an IP  
5 address, and this says Poland. It is drawn from your IP  
6 address. I submit to you that AscendEX nominally a Romanian  
7 exchange, but with a U.S. company apparently pulling all the  
8 strings behind the scenes, didn't care about any of this,  
9 didn't care where you really were. They could have done a lot  
10 more things. They could have done a lot of things.

11 And you learned about what you can do from Mr. Tonkin.  
12 Remember him? He is the British guy who came in, and he was  
13 one of the Mango Markets users, and he talked about all the  
14 things the company where he worked does. His company was a  
15 crypto company too. And all the information they take in to do  
16 their business, it was a long list. You remember Ms. Martabano  
17 went through it with him. They didn't do any of this. KYC  
18 level zero is a zero.

19 You know what else tells you that Avi didn't think he  
20 did anything wrong here? He sued AscendEX to get his funds  
21 back in his own name. You learned that from Mr. Farrell. He  
22 brought an arbitration in Singapore, which I have talked about  
23 twice now, at least, in his own name to get his funds back.  
24 Ladies and gentlemen, you don't do that unless you think you  
25 are rightfully entitled to those funds, they are lawful funds,



O4HMEIS3

Summation - Mr. Klein

1 and you think you should have them.

2 Serum, you didn't hear anything about it, not even a  
3 sea of terms of service, so I am going to move on.

4 Let's talk about the Mango Markets smart contract. I'm  
5 actually -- my clicking skills are not up to par right now.  
6 Let's talk about the Mango Markets smart contract.

7 Again, that's that splash page where it says use at  
8 your own risk. That's the opening page that you have to click  
9 on to go onto the Mango Markets. What did you learn from  
10 witness after witness after witness? Mango Markets, the smart  
11 contract, it's permissionless. Anybody can use it. It's open  
12 source. The code is out there in the code base. Anybody can  
13 look at it and make contributions or suggestions. It's also  
14 self-enforcing. Mr. Smith told you that. What that means is,  
15 it relies on itself to enforce the rules. It's its own little  
16 rule maker. It doesn't look to outside things.

17 So when you go to Mango Markets, you're engaged with  
18 that smart contract. That's how you do your trades. It takes  
19 in inputs and it has an output, and you learn it doesn't ask  
20 for anything. You don't have to put in your name. You don't  
21 have to put in your address, your location. You don't have to  
22 say whether you will maintain collateral. You don't have to  
23 say whether you intend to repay. You don't have to say your  
24 source of funds. By that I mean, where did you get this crypto  
25 you're depositing? It doesn't even care.

O4HMEIS3

Summation - Mr. Klein

1 Now, you might remember we asked a series of questions  
2 about, does it care if you had stolen tokens. You might have  
3 wondered why do they keep asking about this. This case is not  
4 about my client using stolen tokens to conduct these trades.  
5 They are not going to claim those were stolen tokens.

6 But this was an extreme example to show you that the  
7 smart contract didn't care about anything. You just put  
8 information in and it gave you outputs. It's automatic.

9 You also learned, and I am going to say this a bunch,  
10 because it's important here, it let you trade with yourself.  
11 You could open up as many smart contracts as you want and trade  
12 with yourself all day if you wanted to. It didn't stop you  
13 from doing that. It didn't ask you whether you're doing it.  
14 It didn't care.

15 You also learned from Mr. Sheridan, the defense  
16 expert, that you could go, quote, bankrupt and keep opening up  
17 accounts and keep trading. It didn't care. It didn't ask.  
18 And people who used this, you learned, knew this. The  
19 witnesses the government called came in and told you this.  
20 They said: Yes. It didn't ask these questions. It didn't  
21 care.

22 What do we know about my client? We know he went and  
23 looked at how the contract worked. We know that from  
24 Government Exhibit 118A.

25 You learned from Mr. Sheridan that Blockworks is the

O4HMEIS3

Summation - Mr. Klein

1 person who set up the smart contract, and that it's on GitHub,  
2 and this is a depository for the code. This is my client,  
3 repeatedly in the days leading up to his trades, looking at the  
4 smart contract, trying to understand that.

5 The government has talked about a lot of other things  
6 he did. You need to put this all in context. That's part of  
7 the presumption of innocence that he's cloaked in and part of  
8 the proof beyond a reasonable doubt. You need to have the full  
9 context and the full story.

10 He also looked at the risk calculator, and that was  
11 something Mr. Sheridan came in and talked to you about, and he  
12 explained what that was. You learned from him this is a tool  
13 Mango Markets version 3 offered to people. You could input  
14 your prospective trade and see what the output would be.

15 Mr. Sheridan told you: I went and did that, and I got  
16 the outputs that Mr. Eisenberg got when he did his trades.

17 Now, the prosecutor may get up and say, well, you  
18 couldn't input them both at the same time, and you couldn't do  
19 both.

20 It doesn't matter. You know why it doesn't matter?  
21 Because the contract didn't care if you were trading with  
22 yourself. You only needed to know what you were doing in each  
23 smart contract.

24 Now let's talk about Avi's trades on Mango Markets. A  
25 couple of things I want to talk about. He doesn't dispute he

O4HMEIS3

Summation - Mr. Klein

1 made those trades. He doesn't dispute he took a long and a  
2 short out against himself.

3 Those trades were publicly viewable. They were not  
4 done at 2 in the morning. They were done at 6 p.m. And by  
5 publicly viewable, you saw the prosecutor's exhibits. You can  
6 see them coming in and out.

7 Also, what do you know? The prosecutors spent a lot  
8 of time talking to you about how there was no movement and, all  
9 of a sudden, there is these trades. Anybody seeing that would  
10 know that's not a coincidence. Two random people didn't show  
11 up one night at 6 p.m. and each have a \$5 million position  
12 opposite themselves. That defies all logic and all common  
13 sense. Anyone seeing that would know they are a party trading  
14 with themselves, straight up, and that's what happened here.  
15 He did conduct those trades, and the smart contract permitted  
16 it 100 percent.

17 Now, just a couple of points I want to point about  
18 these trades. After he did the trades, where did the funds go?  
19 The prosecutors made a big deal about sounding like he's trying  
20 to hide himself and hide these trades. He sent these funds to  
21 a Circle account in his own name. It was easy to trace. He  
22 didn't do things like use a tumbler or a mixer. He literally  
23 sent it right to a Circle account in his own name, straight up.  
24 Yes, the funds moved on after that. Who cares? The first  
25 place it went, basically, was his own account.

O4HMEIS3

Summation - Mr. Klein

1           There was also a discussion about this health check.  
2           We can see if your account is healthy. The prosecutor equated  
3           it to a credit check. There is no credit check, ladies and  
4           gentlemen. You know this. The smart contract doesn't ask you  
5           anything about what you intend to do or why you intend to do  
6           it. You put in your information and it spits it back out to  
7           you. This is an automatic process.

8           I want to talk to you now about something that my  
9           colleague, Mr. Talkin, talked to you about at the beginning of  
10          this case.

11          Avi put his real money at risk here. There is over  
12          \$13 million of his own money at risk here. The prosecutors  
13          want to make it look like there was no risk. Not true. He had  
14          \$5 million in the short position on the perpetual, and these  
15          are approximates, 5 million in the long, and 3 million he put  
16          on those three exchanges for the Mango token.

17          You know about this risk, and you know Avi understood  
18          it, because of Government Exhibit 502A. Avi talks about the  
19          risk. He says the question is risk. Risky if move up the  
20          price 10X. There is risk here when he is trading on those  
21          other exchanges. That price needs to move up. Otherwise, bad  
22          things are going to happen to his money and his trades.

23          You learned from various witnesses about trading bots  
24          that could have prevented the Mango price from moving up,  
25          making the trades fail. You learned about, quote, hidden

O4HMEIS3

Summation - Mr. Klein

1 liquidity that would have also had the same effect.

2 As the evidence shows, if his health score got poor,  
3 anybody's health scare got poor. There is -- liquidations  
4 start happening. There was money at risk here the whole time.

5 (Continued on next page)

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O4HCEis4

Summation - Mr. Klein

1 MR. KLEIN: Did he end up on the winning side of this?  
2 Yes. Did he make money on this? Yes. But that's what  
3 trading's about. It's not illegal to make money on trades,  
4 it's not illegal to take big positions and take big bets.

5 And I think this is a natural segue to talking about  
6 the, quote, \$110 million borrow. I'm going to talk about the  
7 intent to repay next, but I want to focus on the borrow. Now,  
8 the prosecutor spent a lot of time talking about Mr. Sheridan's  
9 testimony. We appreciate that. Mr. Sheridan answered  
10 questions directly, forthrightly to both Mrs. Martabano and the  
11 prosecutor. That's a stark contrast you all saw with the  
12 government's two experts. Dr. Mordecai, who almost refused to  
13 answer questions on a \$100 hypothetical, and Mr. Jain. Keep  
14 that in mind, because Mr. Sheridan told it like it is here.

15 What I'm going to tell you now is let's step back to  
16 yesterday afternoon and before. So, my client withdrew  
17 \$50 million in USDC. We don't dispute the 50 million USDC, but  
18 it wasn't a borrow, it was a combination of his own money he  
19 put in, and no one disputes he put 5 million in USDC in. So at  
20 least \$5 million of the money he took out is his own money, not  
21 a borrow. Let's start there. That's the first level. The  
22 rest was his profit on his trade.

23 This is DX 50. This is computer code. It's a little  
24 hard to read, we tried to blow it up. What this shows here is  
25 that there was a command from my client to settle his P&L.

O4HCEis4

Summation - Mr. Klein

1 Settling your P&L is when you withdraw profits, you learned  
2 that. This command, 17 seconds later, \$50 million in USDC  
3 withdrawing. 17 seconds later. That's this, nothing. My  
4 client is withdrawing his profits. Mr. Sheridan told you about  
5 the 17 seconds, explaining this document to you. As you know  
6 from this exhibit, the one the government put in, the Mango  
7 Markets documentation, settling your P&L means moving the  
8 profit or loss from the PERP market into a USDC token balance.  
9 When you settle your P&L on a perpetual on one of these longs  
10 or short, you're moving it into USDC, and that's what happened  
11 here. He took profits, \$50 million, and he withdrew them.  
12 Don't let the government try to convince you otherwise. This  
13 was not a borrow. You don't need to settle P&L to borrow,  
14 period. There's no P&L to settle. A borrow is a borrow. You  
15 only settle P&L when you're withdrawing profits.

16 I want to talk to you about this exhibit. The  
17 prosecutor talked to you a little bit about how when you  
18 withdraw, it's a borrow. Actually, this says you're  
19 withdrawing, not borrowing. When you take money out, an  
20 individual cannot withdraw more than the equity. It does not  
21 say borrow, it says withdraw. You learned that you can both --  
22 from Mr. Sheridan, you can toggle to borrow, but you can at the  
23 same time withdraw and borrow. That was Mr. Sheridan's  
24 testimony.

25 I want to talk to you about Government Exhibit 914,



O4HCEis4

Summation - Mr. Klein

1 which the prosecutor referenced. Let's focus on a few things  
2 here. The date of this document, it's December 15th, 2022,  
3 months and months later. This is not taken at the time of my  
4 client's trade. It's not accurate, straight up. It shows a  
5 negative health score. We know when he did these trades, he  
6 would have had to have positive health score to withdraw  
7 anything. It shows a negative value of \$115 million in USDC.  
8 This shows his USDC withdrawn is a borrow -- the 50 million,  
9 sorry, down here. But you know that's impossible because at  
10 least \$5 million of it is his own money. You can't borrow your  
11 own money. You're just taking your own money out.

12 Let's show another exhibit from the government. This  
13 is an undated exhibit, but it lists these same things as  
14 withdrawals. This is Dr. Mordecai's exhibit. You should  
15 reject this exhibit. It's not accurate. You know that from  
16 Mr. Sheridan's testimony. Dr. Mordecai came in here and said,  
17 I know a very limited scope and I can only do certain things.  
18 Mr. Sheridan explained why this isn't a borrow. You see right  
19 up top, the 50 million USDC, the first thing that happened,  
20 that's the settling P&L command, that's the 17 seconds later,  
21 the taking out of profits. The documentation shows you that,  
22 the code shows you that, 17 seconds tells you that. This is  
23 not accurate.

24 One thing I will say, though, is even Dr. Mordecai  
25 doesn't rely on Government Exhibit 914, the December exhibit.

O4HCEis4

Summation - Mr. Klein

1 Those sources down there aren't based on 914. Dr. Mordecai's  
2 not even relying on 914 and neither should you.

3 Now I want to talk to you about the repay bad debt  
4 proposals. There's a lot of things to talk about here, so  
5 please be patient with me.

6 First, these were publicly posted. This wasn't a  
7 secret backroom chat with certain select people on Mango  
8 Markets. This was visible to the entire world. You heard  
9 that. This was the worst way to hide yourself from the world,  
10 if that's what you're doing. These proposals were also posted  
11 before the threats we're going to talk about in a minute,  
12 before my client left this first one, and before that outing  
13 article on Carl Stack, the prosecutor talked about, this came  
14 out first within three hours of the trades.

15 The prosecutors like to make a big deal about this  
16 last part, will not pursue any criminal investigation. Ladies  
17 and gentlemen, use your common sense, who is this binding on?  
18 This is a public proposal. Anybody can read this. Only  
19 certain people are voting it, and even their witnesses said  
20 they didn't vote on this. This isn't binding on anybody. Use  
21 your common sense. Yeah, my client might have been worried  
22 that, like, hey, if I gave all this money back, I also don't  
23 want people reporting me because they shouldn't because I  
24 haven't done anything wrong. That's a natural thing to think.

25 This proposal, what it actually shows is a willingness

O4HCeis4

Summation - Mr. Klein

1 to return funds, that it was a borrow. This is a resolution.  
2 This is a settlement. This is a way to resolve a dispute.  
3 You're making an offer.

4 Let's talk about the next one. So the first one you  
5 heard was rejected. My client made another offer to resolve  
6 this. What's important about this, though, is at this moment  
7 in time when this was up, my client was out of the country, he  
8 was in Israel. He had control of the \$110 million. He didn't  
9 have to do any of this. He could have just stayed in Israel.  
10 Instead, he was seeking to return the funds in a negotiated  
11 fashion.

12 Now, maybe this is the way you wouldn't have handled  
13 it or some other people would, but this is how people do things  
14 in this world of cryptocurrency. And I submit to you that you  
15 should be drawing favorable inference about my client on this,  
16 that if that other money was a borrow, that he was seeking to  
17 repay it quickly, and in fact he negotiated a resolution to  
18 repay it. And the money was sent back, \$67 million. So what  
19 was kept was the profits and what was returned was the borrow.  
20 And both the government's witnesses, Casey and Tonkin explained  
21 they got their money back.

22 Now I'm going to talk about my client's allegedly  
23 fleeing. What the prosecutor didn't tell you about was my  
24 client started immediately getting threats. And this probably  
25 isn't surprising that people might have been upset, but look at

O4HCEis4

Summation - Mr. Klein

1 these threats. These threats happened before he bought his  
2 ticket, before he was outed, before he left. You learned my  
3 client was in Puerto Rico, that's PR there. This is someone  
4 who identified my client, where he lives, and these are threats  
5 of violence.

6 He went to Israel. We don't dispute that, and this is  
7 the reason: The evidence shows that he knew about these  
8 threats, he visited the Mango Discord where these were posted  
9 over 60 times. It shows zero seconds, ladies and gentlemen,  
10 for the view, but you don't visit 60 times and not look at  
11 anything. I submit to you the evidence shows he knew about  
12 these threats, he booked his ticket out of town, he went to  
13 Israel.

14 I also want to focus on another thing to think about.  
15 When did he buy that ticket? They talked a lot -- we spent a  
16 lot of time talking about how he planned this all out, he had  
17 all these plans to do this. Why not go to Israel first? Why  
18 wait until afterwards? Why not do these trades from Israel?  
19 He could have done these trades from Israel. You learned that.  
20 You can do these trades from anywhere. All you need is an  
21 internet connection and you can do these trades. Why not start  
22 in Israel? He wasn't fleeing because he thought he had done  
23 something wrong, he was fleeing because of the threats. Or  
24 leaving. Sorry. Fleeing is the wrong word.

25 And why he was in Israel, what was he doing? You know

O4HCEis4

Summation - Mr. Klein

1 two things he did. He sued AscendEX and Circle to get his  
2 funds back in his own name, telling them, hey, you froze my  
3 funds, I want them back, these are my funds. Those are funds  
4 the prosecutors have tied directly to this case. He's filing  
5 lawsuits, he's bringing arbitrations. Common sense tells you,  
6 you don't do that if you think you are entitled to those funds,  
7 if you think they are lawful funds.

8 Now let's talk about, he's in Israel, he had the means  
9 to stay there, but guess what he did, he came back to the  
10 United States in December on his own, in his own name on a  
11 flight, and he landed in Puerto Rico, and unbeknownst to him,  
12 there was an arrest warrant and he was arrested. But he's the  
13 one who chose to come back here and he came back voluntarily.  
14 And I think the inference I would ask you to draw from that and  
15 from all this other is what his state of mind was. He didn't  
16 think he had done anything wrong. He could have stayed in  
17 Israel if he wanted to. He flew back on his own.

18 He also flew back to the same city he left from. If  
19 you're really trying to, like, navigate around law enforcement,  
20 are you going to fly back on your own name? Are you going to  
21 fly back in the same city where you're from? No, you're going  
22 to take lots of evasive steps. None of those were taken here.  
23 Own name, passport, back to the same city he left from.

24 Let's talk for a moment about the searches, the chats,  
25 the press releases, and the Waves documents. These are all

O4HCEis4

Summation - Mr. Klein

1 helpful in establishing Avi's innocence. That may seem like an  
2 odd thing to say because the government spent a lot of time  
3 talking about them, but when you look at them in context, when  
4 you look at them with the presumption of innocence in mind and  
5 you give my client the fair shot you're supposed to, they show  
6 he's innocent.

7 What I want to start with is a chat the prosecutor  
8 talked about, hanging out internationally until stuff blows  
9 over. We don't dispute he went to Israel in his own name and  
10 he flew back. He had been threatened. Blows over, perfectly  
11 fair interpretation of this, until the threats go away, until  
12 I'm safe to return from physical violence. And if this was  
13 about law enforcement, why come back in December? He could  
14 have stayed there.

15 The prosecutors also talked a bunch about these press  
16 releases and put them into evidence. Look at those cases,  
17 ladies and gentlemen, look at the press releases. They're all  
18 different. Those aren't his case. One of the cases, I'll call  
19 it the Phillips case, it's very different. Phillips was  
20 registered with the CFTC, his hedge fund was also registered  
21 with the CFTC. It involved foreign currency and option  
22 trading. It's not this case.

23 And we spent -- the prosecutor spent a lot of time  
24 talking about his web searches and how these show he had a  
25 guilty frame of mind. He was searching words like "wire fraud"

O4HCeis4

Summation - Mr. Klein

1 or "manipulation," but you got to look at all the web searches  
2 and put them in context. He was doing the same searches both  
3 before he left as he was doing after he left.

4 So, let me give you this example. If you're a bank  
5 robber and you for some reason don't know what robbing a bank  
6 is and you type a search, what is bank robbing, how do I rob a  
7 bank, then you go out and rob a bank, you don't keep searching  
8 afterwards, how do you rob a bank. You just looked it up, did  
9 it, and you're done. But if you don't know what you've done is  
10 wrong, if you're worried that it might be, you might look up  
11 things and say, hey, I'm thinking about doing this trade, we  
12 know he was planning this, we don't dispute that. If you're  
13 trying to figure out where the lines are, you might do this  
14 research. And we all know, common sense tells us, none of us  
15 want to be judged solely on our web searches, none of us, or if  
16 we do, we want to put in context, the entire context. So he's  
17 doing web searches, but he's doing the same type of web  
18 searches afterwards. That tells you that he wasn't sure what  
19 he had done was wrong, especially when you combine it with all  
20 these other things, coming back voluntarily, booking a flight  
21 on your own. When you look at the whole picture, not isolated  
22 bits and pieces, you actually get the full picture.

23 Another example of this, this is something the  
24 prosecutor showed you right before when he's looking up statute  
25 of limitations, market manipulation, elements of fraud, fraud.

O4HCEis4

Summation - Mr. Klein

1 He's also looking up cryptocurrency tax lawyer, master your  
2 crypto taxes with the pros. Someone who decided that they're  
3 committing a crime, like wire fraud, is not trying to figure  
4 out next how they pay taxes on their legal gains. Common sense  
5 tells you that. Rather, it shows that what Avi thought he was  
6 doing was legal and he was prepared to pay taxes on it.

7 The prosecutor also spent a bunch of time talking  
8 about this Waves document. What you didn't see and what I'm  
9 showing you here is when these documents were created and these  
10 searches were done. These searches are the terms directly in  
11 this document. "Market manipulation," right there, straight  
12 up. It's the exact same time. That timestamp is the file  
13 metadata showing that. So he's writing this document about  
14 Waves, and the prosecutor wants you to believe that Waves is  
15 the same thing that happened here. It's not. It's a separate  
16 thing. It's completely different. It sounds similar, but it's  
17 different. In Waves, they created a lending platform that  
18 people stole. Mango Markets was decentralized, no one  
19 controlled it. This is a completely different thing. Guess  
20 what my client did, guess what you know here, he filed a  
21 lawsuit about this. He was trying to resolve this civilly.  
22 This was him talking about it and writing about it apparently,  
23 but he had filed a lawsuit.

24 I've walked you now through the testimony and exhibits  
25 you saw, filled in the gaps the prosecutor left, giving you the



O4HCEis4

Summation - Mr. Klein

1 context you need, talking about the presumption of innocence,  
2 reasonable doubt. I now want to turn to talking about the  
3 counts.

4 But there's a gatekeeping issue that my colleague,  
5 Mr. Talkin, mentioned in his opening, and I need to talk about  
6 it. And I apologize, it's dry. I'm going to be reading more  
7 of this than I'd like, but it's important because the  
8 government hasn't cleared this initial hurdle on these two  
9 counts. What this is, it's for you to consider the  
10 prosecutor's arguments on Counts One and Two. They have to  
11 prove that perpetual is something called a swap, and the Judge  
12 will instruct you on that term. They don't even get off the  
13 starting line without proving that, and I submit to you they  
14 haven't.

15 The summary version of the first thing the prosecutors  
16 must prove, and again, the Judge will give you much more  
17 thorough instructions on this, is that the Mango perpetuals  
18 involve an exchange of payment and a transfer of risk without  
19 actually exchanging the asset that incorporated the risk. The  
20 prosecutor talked to you about it, but forgot to mention that  
21 last clause, which is the key clause here, "without actually  
22 exchanging the asset that incorporated the risk." The  
23 prosecutor left that out when he talked to you.

24 And you heard them talk about how the perpetual was a  
25 pairing of Mango and USDC. You know that because USDC was

O4HCEis4

Summation - Mr. Klein

1 actually exchanged by the parties to the perpetual. So it  
2 can't be a swap. Counts One and Two fail right there, end of  
3 story. But even if the prosecutors could prove that part  
4 beyond a reasonable doubt, they also have to prove: One, that  
5 the perpetual is based either on the value of USDC or the  
6 funding rate; or two, that the funding rate isn't something  
7 known as a narrow-based security index. That is a  
8 complicated-sounding term that I'll have to explain in a moment  
9 and the Judge will instruct you on much later about.

10 And let me explain to you why the prosecutors won't be  
11 able to prove it either. The USDC is the easier part of this,  
12 I submit. The value of the perpetual is dependent on the  
13 oracle, and the oracle reported out in dollars, not USDC. You  
14 heard from Mr. Hermida – that's the guy from Switchboard who  
15 ran the oracle company – and others that USDC is a functional  
16 equivalent of a dollar on the Blockchain. It's pegged to the  
17 value of the dollar, and you can even trade it for dollars at  
18 certain institutions. USDC is just the virtual cash one uses  
19 to buy or get paid in the perpetuals, just like a cup of coffee  
20 isn't based on the strength of a dollar, the perpetual doesn't  
21 depend on the value of USDC.

22 The prosecutors also can't meet the funding rate piece  
23 of this because the funding rate is something called a  
24 narrow-based security index. Again, your instructions will  
25 have more details on this. When you strip away that legal

O4HCEis4

Summation - Mr. Klein

1 jargon, all that it means is that it's an interest or the share  
2 in something that based on a small group of investable assets  
3 called securities. The Judge will instruct you on that for  
4 purposes -- sorry. The Judge will instruct you that in this  
5 case, Mango is a security. And that's the Mango token, to be  
6 clear.

7 So here, because the funding rate is entirely based on  
8 Mango, it's a narrow-based security index and is legally an  
9 exception of the basis from the perpetual. And I'm telling you  
10 that the funding rate is based on Mango because you know that  
11 the funding rate is based on the oracle, which is just a  
12 calculation of three different prices of Mango on the exchanges  
13 and the price to buy Mango perpetuals on Mango Markets, which  
14 is based on Mango. In other words, because Mango is at the  
15 heart of every piece of the funding rate and because the  
16 funding rate is an interest in a payment based on these manual  
17 inputs, the funding rate legally can't be the basis for the  
18 perpetual. Because the prosecutors can't prove beyond a  
19 reasonable doubt that the Mango perpetual is based on the value  
20 of either USDC or the funding rate, you should acquit my client  
21 on Counts One and Two.

22 Now I'm going to talk about Counts One and Three.  
23 I'll call them the fraud counts, for simplicity. I'm going to  
24 put together briefly what I've been talking about to show you  
25 Avi didn't have the necessary criminal intent. By that, I mean

O4HCEis4

Summation - Mr. Klein

1 the mindset to defraud people. There are big and little things  
2 I've been talking to you about up here.

3 Some of the examples. He didn't fly to Israel first  
4 and then do the trades. And while in Israel, he quickly  
5 negotiated a settlement and returned \$67 million. He sued  
6 Circle and AscendEX in his own name to get his crypto back.  
7 And then he flew to Puerto Rico in his own name. When thinking  
8 about whether he had the intent to defraud, again, I want to  
9 emphasize it, he's cloaked in the presumption of innocence.  
10 You need to take in the context, and you can draw inferences  
11 favorable to him, and I will submit to you that the evidence  
12 shows you should. And always, the proof beyond a reasonable  
13 doubt is on the government.

14 I want to talk to you about another element for both  
15 of those. It's called materiality. So to prove these two  
16 counts, the government has to prove materiality. The Judge is  
17 going to define that for you, you will get that in your  
18 instructions. Boiling it down, it means the alleged deceptions  
19 relate to things of real importance. I expect the Judge will  
20 also explain to you the alleged deceptions have to be on  
21 something that could have influenced a reasonable person's  
22 decision.

23 Let's take the deceptions, or alleged deceptions in  
24 turn. There's the location and identity allegation. Again,  
25 you heard a lot of testimony that Mango Markets doesn't care

O4HCeis4

Summation - Mr. Klein

1 where you are or who you are. There should be no dispute about  
2 that. Didn't ask those questions. The smart contract didn't  
3 ask them. And the smart contract could have been programmed in  
4 other ways. And I already explained why this didn't matter to  
5 FTX, AscendEX, and there's been no mention of Serum.

6 The next alleged deception is taking both sides of the  
7 perpetual trade - that's the long and the short - on Mango  
8 Markets. This one is even more obvious of why this wasn't  
9 material. Mango Markets let you do that. There's nothing  
10 stopping you. Smart contract absolutely permitted that. You  
11 heard that testimony. You could trade yourself all day long.

12 The third one is the intention to borrow and maintain  
13 collateral. We've talked about this a bunch. I just explained  
14 why the \$55 million in USDC wasn't a borrow. For the rest, my  
15 client quickly negotiated the return of it through resolution.  
16 That goes to show that he was planning to return it always.  
17 Things blew up in a way maybe he hadn't anticipated, there were  
18 threats, other things were happening, but ultimately, those  
19 funds were returned.

20 They also didn't show that he was deceptive about the  
21 borrow. You know the smart contract permitted it. As long as  
22 your health score was a certain point, you could borrow  
23 whatever you wanted, end of story. So his intent to borrow --  
24 sorry. His intent to borrow could not have been material  
25 because he always intended to pay people back, and he did pay

O4HCeis4

Summation - Mr. Klein

1     them back quickly.

2             More importantly or equally important, any borrow  
3     wasn't capable of influencing anybody's decision. The smart  
4     contract was permissionless, it was self-enforcing, it was not  
5     programmed to deny that transaction if your health score let it  
6     do it, and it did because it happened. That's how we know it.  
7     All his trades fully complied with the smart contract, and  
8     Mango Markets was set up to deal with the situation or you  
9     didn't. You heard about it. You got liquidated. That was the  
10    solution. If there wasn't enough after a liquidation, there  
11    was the insurance fund, then there was socialized loss. This  
12    was all built into the system.

13            The fourth alleged deception is market manipulation,  
14    false pricing signals. You heard a lot about the prices of the  
15    Mango token, but there's one thing you didn't hear from anybody  
16    on notice that was trading with them, with the Mango token. No  
17    witnesses came in and talk about that, none, zero. That's  
18    classic immateriality. No one said it mattered to them who was  
19    trading with them on those exchanges.

20            On a similar note, the Mango Markets smart contract  
21    could not have done things differently based on the oracle. So  
22    the oracle was setting a price, and all the Mango Markets  
23    contract does is respond to that price. It doesn't ask why the  
24    price is moving, who's moving it, none of those questions. It  
25    just says what is the price, and then I'm doing this. So

O4HCEis4

Summation - Mr. Klein

1 trading up the spot price wasn't influencing the smart contract  
2 in this way. It just had to do it. It was responding  
3 automatically. And nothing anybody else was doing was  
4 affecting that either.

5 Now, you also heard, and the prosecutor pointed this  
6 out, from a number of witnesses about what they thought under  
7 various hypotheticals. Would you have done this if you had  
8 known this, would this matter to you if this happened. First,  
9 none of these people were trading with my client. There's no  
10 evidence of that. Second, and the Judge will instruct you on  
11 this, people's individual thoughts and feelings can be  
12 considered, but they don't control. The question for you to  
13 answer is whether the information was capable of influencing  
14 any other result. The evidence showed it wasn't because the  
15 smart contract controlled and it operated the way it was  
16 supposed to.

17 So I've talked about Counts One and Three, now I'm  
18 going to talk about Count Two, the market manipulation count.  
19 The Judge is going to instruct you about these elements, but  
20 this charge is essentially that my client manipulated the price  
21 of the perpetuals on Mango Markets. Let's first talk, it's the  
22 price on Mango Markets, it's not the price of the Mango token  
23 on those other exchanges. It's the price of the perpetual  
24 itself.

25 Second, it's on Mango Markets. Again, it's not on

O4HCeis4

Summation - Mr. Klein

1 FTX, AscendEX, or Serum. It's the price of the perpetual on  
2 Mango Markets. That's the starting point, and that's important  
3 because I understand it can get confusing here. When you put  
4 those pieces together, the price of the Mango perpetual on  
5 Mango Markets, the prosecutor has to show that my client  
6 intentionally moved the trading cost of the perpetual, the  
7 price it costs to buy it on Mango Markets. You heard almost no  
8 evidence of this whatsoever. Even Dr. Mordecai, the  
9 government's expert, the prosecutor's expert struggled a lot to  
10 answer questions directly and admitted that none of his slides  
11 that are in evidence included the price it cost to buy the  
12 perpetual.

13 The trading price of the perpetual didn't matter to  
14 Avi. I know that's a little counterintuitive, but it didn't.  
15 He didn't sell his perpetuals. That's not what he was trying  
16 to move, was the price of the perpetual. He didn't need to  
17 move the price of the perpetual to make his trades work.

18 The prosecutor is focusing and the prosecutors are  
19 focusing on the oracle settlement price. That's something  
20 different. I know this can get confusing, but those are two  
21 distinct things: The price of the Mango Markets perpetual and  
22 the oracle settlement price. The oracle is the price of the  
23 Mango token on those three exchanges. Remember, it comes  
24 together and it spits out one price based on the median. It's  
25 not the price of the perpetuals, it's not the price on Mango



O4HCeis4

Summation - Mr. Klein

1 Markets. And why the oracle affects the value of the  
2 perpetual, that's simply not what market manipulation is about.

3 I want to talk to you on venue, and you're going to  
4 get an instruction on venue, whether this is the right  
5 courthouse for this case to be in. You have not heard  
6 sufficient evidence of that, ladies and gentlemen. You should  
7 scrutinize the evidence on this. The things the prosecutor  
8 talked about to support that, that you've heard about so far,  
9 don't show they were done in furtherance.

10 There's no proof that those emails you saw were sent  
11 from New York. It's just the bottom line. Doesn't mean it had  
12 to be sent. You didn't hear anyone come in and say, I sent  
13 these from New York. And those daily reports on AscendEX, a  
14 daily report is just a recap, it's not something done in  
15 furtherance.

16 I'm now going to wrap up. I appreciate your  
17 attention. Thank you. The entire defense team and Avi  
18 appreciate you taking time out of your lives to be here with  
19 us.

20 I want to go back to where we started with the  
21 prosecutor's opening now that you've seen and heard all of the  
22 evidence. The only fake diamond in this case is the  
23 prosecution. The prosecution is asking you to commit to its  
24 flawed and incomplete version of events. The testimony and  
25 evidence we just discussed lets you know that you can't and you

O4HCeis4

1 shouldn't, that the prosecutors haven't met their high burden  
2 of proof beyond a reasonable doubt. After I sit down, a  
3 prosecutor is going to get up, and that's as the Judge  
4 explained, they have the burden. No one from the defense gets  
5 to respond, but that of course doesn't mean we wouldn't have  
6 things to say. You now hopefully have a good sense of the full  
7 story and a lens of how to evaluate the prosecutors' final  
8 arguments.

9           Some of the things I want you to remember: That  
10 splash page disclaimer, use at your own risk, how the smart  
11 contract operated. All of these are highly relevant to what  
12 was going on in my client's head, what he thought about what  
13 was happening, but also what people's expectations were on  
14 Mango Markets. Keep things like that in mind. The only  
15 verdict consistent with the evidence and the legal instructions  
16 the Judge is going to provide you is not guilty on all counts.  
17 Avi should be acquitted.

18           THE COURT: Thank you, Mr. Klein.

19           MR. KLEIN: Yes, your Honor.

20           THE COURT: I will invite the jury, if they're  
21 interested, to stand up for a second while Mr. Burnett goes to  
22 the podium and we'll continue with the government's rebuttal.

23           By the way, Mr. Burnett, if you need a couple of  
24 minutes or feel it would be helpful, I'm happy to take a short  
25 break.

O4HCEis4

1 MR. BURNETT: Just a moment to get some papers  
2 together would make this a much more efficient rebuttal.

3 THE COURT: We'll take a short five-minute rest. You  
4 can retire to the jury room and come back.

5 Just so you know what's going to happen next, we're  
6 going to have the government's rebuttal, then we'll take a  
7 longer break so you can get some lunch and settle in for jury  
8 instructions, which we'll take up after lunch. So let's come  
9 back in five.

10 (Jury not present)

11 Mr. Burnett, I apologize for that. I thought you were  
12 kind of ready to go, so I apologize for everyone kind of  
13 standing and waiting for you to approach.

14 MR. BURNETT: I apologize. My aspiration was to do  
15 that, but there was a fair bit to cover up. I just wanted to  
16 make sure --

17 THE COURT: No, that's okay. I wanted to make sure  
18 you had time to get ready.

19 While you're doing that, we have an exhibit list that  
20 was furnished by the government. I just want to make sure that  
21 the defense has seen that list and is comfortable with that  
22 version of the list being sent back to the jury room.  
23 Specifically, the list that contains the various headers and  
24 descriptions. So you'll have time during the lunch break to  
25 take a look at that, but you just need to check that and make

O4HCEis4

1 sure that what we send back into the jury room everyone is on  
2 board with.

3 MR. TALKIN: Your Honor, there are certain FTX  
4 documents that are very difficult to redact that were put in  
5 subject to redaction. They're on the list. Because of that,  
6 they are not on the computer. If they're asked for, the  
7 parties have discussed how to handle that situation, and if  
8 it's okay with the Court, we think the best way to handle it  
9 is -- they're on the list, they can be seen. If they're asked  
10 for, we can redact them and add them to the computer. I don't  
11 know if that procedure is acceptable to the Court, I think it's  
12 acceptable to the parties. I don't think they're in the crux  
13 of any of the arguments you heard here today, but certainly  
14 they're fair game in this case and can be asked for.

15 THE COURT: That sounds fine.

16 Ms. Huang, is that acceptable to the government?

17 MS. HUANG: Yes, your Honor. The only thing I was  
18 going to add, obviously we don't want the jury to wait if they  
19 wanted to see one of those exhibits, so during the lunch break,  
20 we can also work on starting to redact those documents so that  
21 they are ready.

22 THE COURT: If you're able to put them on, great. If  
23 not, I'm sure the jury would ask if they would like to see any  
24 of those documents.

25 MR. TALKIN: Thank you.

O4HCeis4

Rebuttal - Mr. Burnett

1 THE COURT: Okay. We'll come back in five.

2 (Recess)

3 Mr. Hernandez, let's get our jury back.

4 THE DEPUTY CLERK: Yes, your Honor.

5 (Jury present)

6 THE COURT: Mr. Burnett, you may proceed.

7 MR. BURNETT: Thank you, your Honor.

8 Good afternoon, everybody.

9 So this is the last chance we're going to have to  
10 speak with you. Let me start out by saying thank you for all  
11 the work you've put in so far and all the attention you've paid  
12 throughout this case. It's the way both the parties can know  
13 that everyone's getting a fair trial here. It's also how we  
14 can know that you know the evidence in this case, that you know  
15 the truth, and that you know what the defendant, Avraham  
16 Eisenberg, did was a crime.

17 You heard Judge Subramanian tell you at the beginning  
18 that the defense has no burden, and that stays true right now  
19 the same way it's been true throughout trial, the burden is  
20 always on the government. But, when the defense makes  
21 arguments, you have to scrutinize those, you have to see how  
22 they line up with the evidence to see if they make sense, and  
23 our rebuttal is our chance to respond to some of those  
24 arguments. I can promise you, I'm not going to try to respond  
25 to all of them because you don't need me to. You've been here

O4HCEis4

Rebuttal - Mr. Burnett

1 the whole time, you've seen the evidence, you've heard the  
2 testimony, you know the case.

3 But let me tell you this, there was a purpose behind a  
4 lot of the defense arguments, and that was to point you in a  
5 lot of different directions, to terms of service, to something  
6 about whether anyone cared about locations, to Oliver Tonkin's  
7 business, and it's all pointing away from the core of the case,  
8 and that's that the defendant committed fraud and manipulation.

9 The fact that he did fraud and manipulation on  
10 something called a smart contract doesn't make it legal, it  
11 doesn't make it not fraud, it doesn't make it not manipulation.  
12 That's because the defendant manipulated and lied about two  
13 things that the smart contract cared about. Might not have  
14 cared about your name, might not have cared about where money  
15 came from, but it cared if you had enough assets on the  
16 platform to support a borrow, and it cared if you clicked that  
17 borrow button. That's how it decided if you had enough so  
18 you're allowed to take a borrow, and that's how it decided to  
19 give you a borrow. Those were the two core things that that  
20 smart contract and the people who designed it, because there  
21 were people behind it just like there were real people who had  
22 their money on that platform, that's what they cared about and  
23 that's what the defendant lied about.

24 Now, I want to make sure we're talking about those  
25 lies, because just because the defense is saying they're not

O4HCeis4

Rebuttal - Mr. Burnett

1     contesting certain parts of the case doesn't mean those parts  
2     of the case don't matter. One important part is the  
3     manipulation. That manipulation should be front and center in  
4     your deliberations because it's the center to both the  
5     manipulation counts in the case, but also the fraud counts in  
6     the case. You saw, and the defense doesn't really contest,  
7     that the defendant pumped the price of Mango relative to USDC  
8     by over 1,000 percent in just 15 minutes.

9             Now, importantly, that wasn't just the price of Mango  
10     on a bunch of different platforms like Mr. Klein was trying to  
11     tell you because you heard the testimony that what Mango  
12     Markets does is it uses that oracle, it takes those prices, it  
13     brings that price back to its platform, and that price becomes  
14     the settlement price for the perpetual. It's how everyone  
15     knows if they're winning the bet, if they're losing the bet.  
16     It's the key price that matters. If you want to know if your  
17     long position is up, if you want to know if your long position  
18     is down, if you want to know if you're making money, if you're  
19     losing money, that price, the settlement price that comes from  
20     the oracle, the price that the defendant manipulated by over  
21     1,000 percent, that's the whole ballgame and that was the focus  
22     of the defendant's crime. He manipulated that price so he  
23     could trick the system into giving him money. The system ran a  
24     credit check, and it checked the value of his assets which were  
25     determined by that price. Smart contract might not have cared

O4HCEis4

Rebuttal - Mr. Burnett

1 about his name, but it cared about if he had enough money to  
2 support the borrow that he was going to take out.

3 You can think about this outside the context of  
4 cryptocurrency easily. Say you go on something like Rocket  
5 Mortgage, a place where you can apply for a loan online. You  
6 can plug in the value of your house, the value of your assets  
7 there. There might not be a person on the other end of that  
8 checking it, it's a software program. The software program  
9 will see if the assets you plug in match up with the size of  
10 the loan you want to take out. But that still matters to the  
11 platform. In fact, it's the key thing that matters to the  
12 platform in determining whether it's going to let you take out  
13 that loan or not. And that key thing is what the defendant  
14 manipulated and it's what he lied about.

15 The other core part of the fraud was clicking that  
16 borrow button. Again, remember, doesn't matter if the smart  
17 contract cares about your name or your location because you  
18 know from the testimony, from the screenshots that you saw and  
19 from the testimony of every single witness, including the  
20 defense's own expert, that the system cares if you click that  
21 borrow button. The system cares if you click that borrow  
22 button because you have to click it in order to borrow. You  
23 can't borrow without clicking the button.

24 (Continued on next page)

25



O4HMEIS5

Rebuttal - Mr. Burnett

1 MR. BURNETT: By clicking that button, what the  
2 defendant was doing was representing to the system that he was  
3 trying to borrow, that he wanted to take out a loan, and that  
4 has meaning. You know borrow has meaning in your everyday  
5 life. If someone came up to you and said, hey, I'd like to  
6 borrow ten bucks, you would know what that meant, and that's  
7 what the system was programmed for too, giving someone money on  
8 the understanding that they were going to keep up enough  
9 collateral on the platform until they repaid.

10 But the defendant was lying because he had no  
11 intention to do what borrowing was. He had no intention to  
12 keep collateral on the platform until he repaid. He planned to  
13 take the money and run. He was clicking the borrow button, but  
14 he was stealing. That's the second lie, and it mattered  
15 because he couldn't have gotten the money off the platform  
16 unless he did it.

17 Now, you have heard Mr. Klein argue to you that, well,  
18 maybe the defendant didn't borrow at all, really. Maybe this  
19 was a settlement and he was just taking away profits. You know  
20 that's wrong because you have seen it with your own eyes. You  
21 saw it in two places.

22 First, you saw the account balance page that was  
23 Government Exhibit 914, and that showed all of the borrows  
24 listed out on the accounts there. Those numbers aren't just  
25 made up. That's the numbers from the Mango Markets system that

O4HMEIS5

Rebuttal - Mr. Burnett

1 list out all the borrows. But you also saw it in another  
2 place. You don't even have to take that Government Exhibit 914  
3 on its own.

4 Mr. Sears, if we can put up the one slide, please.

5 You saw Government Exhibit 1002. This was the  
6 spreadsheet that we walked through maybe a little painfully  
7 with Mr. Sheridan on cross-examination the other day, which is  
8 the actual borrowing data from Mango Markets, which showed that  
9 while the defendant was on that program, while he was sitting  
10 on the borrow page committing his crime, the borrows for every  
11 one of the cryptocurrencies he took out skyrocketed.

12 You don't have to just rely on Government Exhibit 914.  
13 There is a reason Mr. Klein didn't talk about this at all, and  
14 it's because it's devastating evidence that what the defendant  
15 was doing was borrowing. Just look at the second-to-last line.  
16 USDC. How much do borrows jump during the time of the  
17 defendant's crime? 54 million. That's the same amount that  
18 shows up on Government Exhibit 914, the account balance page.  
19 The data and the documents show he was borrowing. You should  
20 believe your own eyes.

21 Now, I want to shift gears and focus a bit on this  
22 willfulness point. Willfulness is basically just the idea of,  
23 hey, did the defendant understand what he was doing was against  
24 the law? He didn't need to know he was violating a particular  
25 law. He didn't need to know, here is how the commodities laws

O4HMEIS5

Rebuttal - Mr. Burnett

1 worked. He needed to know what he was doing was generally  
2 unlawful. And I'm not going to go through blow by blow all the  
3 evidence that you heard on the closings, because you have heard  
4 it all. You can use your common sense here. But what I will  
5 answer is this point about how the defendant eventually sued  
6 some places and later came back.

7 That is not the good point that the defense tries to  
8 make it out to be. So you need to put it in context of the  
9 timeline. Remember what happened. The defendant planned all  
10 of this scheme out, knowing that it was illegal. He knew that  
11 it was illegal because he knew people had been prosecuted for  
12 market manipulation and fraud. He tweeted about it. He knew  
13 it was illegal because he ran searches about market  
14 manipulation and fraud.

15 And you know what he was thinking about his searches  
16 and the conclusions that he draw from those searches because  
17 the first thing that he did as soon as he completed that crime  
18 was to go and say, hey, I'll give you some of the money back if  
19 you promise not to press charges against me. That shows you  
20 what he thought about his searches. This wasn't someone who  
21 was unsure about whether what he was doing was illegal or not.  
22 The minute he finished it he said, hey, I'm holding all this  
23 money ransom, promise not to prosecute me, and I'll give some  
24 of it back. He didn't do that under his own name. He did that  
25 anonymously.

O4HMEIS5

Rebuttal - Mr. Burnett

1 He didn't stay anonymous for long because you saw that  
2 someone eventually found him out the next day. How did he  
3 react? He got on a plane out of the country. He didn't get  
4 out of a plane out of the country because someone somewhere on  
5 the Mango Markets Discord said, oh, I am going to hurt that  
6 guy. We don't even know if he looked at that, let alone cared  
7 about it.

8 But what you do know is that he got on an airplane out  
9 of the country, a few days later was searching extraditions  
10 from Israel, and that same night, while he was on the airplane,  
11 while he was sitting on the tarmac, he was searching criminal  
12 market manipulation, elements of criminal market manipulation.  
13 He was getting out of dodge because he knew he had broken the  
14 law and that his cover was blown.

15 So what happens after that? His cover is blown. He  
16 is out there now. So people know who he is. So what does he  
17 do? He gets his deal through. He gets his promise from Mango  
18 Markets not to press charges by getting another deal through  
19 there. And he's feeling pretty good. He is out there, but he  
20 has got his promise from Mango Markets. They are not going to  
21 press charges or freeze his funds.

22 Sure, he's brazen. He goes and tries to get his money  
23 from other places, like AscendEX or FTX, the same way he got it  
24 from Mango Markets. He doesn't need to hide anymore because he  
25 has already gotten his waiver of criminal liability from Mango

O4HMEIS5

Rebuttal - Mr. Burnett

1 Markets, and he can't hide because someone has already outed  
2 him.

3 So he waits, he challenges some things, and he thinks  
4 things have blown over, and then he comes back. He thinks  
5 things have blown over, and then he comes back.

6 And he thinks things have blown over because nothing  
7 about the law enforcement action against him is public. You  
8 saw that he was arrested on a sealed arrest warrant. That  
9 means he flew back having no idea that law enforcement was  
10 still looking for him. He thought the coast was clear, so he  
11 came back. He was wrong.

12 Let me switch gears now and spend just a few minutes  
13 talking about this swap issue. There is no need for this to be  
14 overly complicated. It's actually quite simple.

15 You know that a Mango perpetual is a swap because  
16 every witness has really explained it to you in the exact same  
17 way. Not just the government's witness, Mr. Sheridan also  
18 explained it the same way yesterday as well.

19 And a swap is really just a bet. It's a bet on the  
20 value of two things. Here it's the relative value of Mango and  
21 USDC. You heard that that relative value, that pairing is  
22 important because cryptocurrencies, it's how they trade. They  
23 trade in these pairs. So the price of the cryptocurrency is a  
24 price relative to another cryptocurrency. The value of each is  
25 what matters because it's a supply and demand, the supply of

O4HMEIS5

Rebuttal - Mr. Burnett

1 Mango relative to USDC. That's what determining the value, and  
2 that's what the bet is on in a perpetual.

3 Now, Mr. Klein tried to tell you, well, because the  
4 parties ultimately pay up in USDC, it's not a swap. That's not  
5 what the judge is going to instruct you on. What the judge is  
6 going to instruct you on is something is not a swap if the  
7 parties exchange an asset that incorporates the risk that they  
8 are betting on. The risk that they are betting on is the risk  
9 of the relative value of Mango and USDC.

10 So if the parties were exchanging Mango and USDC, at  
11 the end of the day, like in those futures that Mr. Jain  
12 described to you early in trial, that would be the parties'  
13 exchanging something that's the same value they are betting on.  
14 But that's not what they do. At the end of the day, they just  
15 exchange USDC, which is why this is a swap.

16 Judge Subramanian will instruct you that in this case  
17 this needs to be a swap that falls within the commodities laws.  
18 That's something that's important too. You know that is the  
19 case for two reasons.

20 First, you know it's the case because Mango  
21 perpetuals, the value of them is based on in part on USDC, and  
22 you know that that's the case because that's literally what  
23 every witness has said throughout trial. The perpetuals are  
24 based on relative value of Mango and USDC.

25 Mr. Klein's only answer to that has been to say, well,

O4HMEIS5

Rebuttal - Mr. Burnett

1 USDC is kind of just like a dollar. People treat it like a  
2 dollar. It doesn't matter if it is why like a dollar. It's  
3 not a dollar. It's a cryptocurrency issued by some company in  
4 Boston called Circle, not the Federal Government. You don't  
5 walk around with USDC in your pocket. You don't pay taxes with  
6 USDC. It's just a different thing. It's property, it's a  
7 cryptocurrency, it's not the green thing you have in your  
8 wallet, so it's not a dollar. It's really as simple as that.

9 The other way you know that this swap is a swap  
10 subject to the commodities laws is because of the funding rate.  
11 Now, the funding rate, Mr. Davis and Mr. Jain explained it to  
12 you. It's based on the value of the order book on Mango  
13 perpetuals against the oracle price and it's a rate. It's a  
14 stream of payments. You know it's a rate because it's called a  
15 funding rate. You don't need to take my word for it. You can  
16 take Mango Markets' word for it. That's what they called it  
17 too.

18 Now, Mr. Klein is trying to convince you that the  
19 funding rate is something called a narrow-based security index.  
20 That's a bunch of jargon, but it's not. Here is the deal. An  
21 index is something like you see in the news, like the S&P 500  
22 is an index, NASDAQ is an index. It's a group of stocks, big  
23 group of stocks, a basket of them.

24 Something is a narrow-based security index if it's a  
25 small group of stocks or it's an ownership interest in that

O4HMEIS5

Rebuttal - Mr. Burnett

1 group of stocks. Let's say you have like a portfolio of  
2 stocks, and you own a share in that portfolio of stocks, that's  
3 an interest in an index. The funding rate is not an interest  
4 in an index. You don't own a share of anything. You don't own  
5 a share of a portfolio of stocks. You don't own a share of  
6 Mango.

7 The fact that Mango prices are incorporated in there  
8 is not the question for you. The question is, is it an  
9 interest in an index. And it's not an interest in an index.  
10 It's just a rate. A rate is something different.

11 You will see this in the instructions, but at the end  
12 of the day it's clear. As long as a rate is not an interest,  
13 which it's not, then this is subject to the commodities laws.  
14 And as long as USDC is not the same thing as a dollar, then  
15 this is also subject to the commodities laws. If either of  
16 those are true, you can move on from the technical stuff, and  
17 the evidence is clear that both those things are true.

18 Now, I want to stay on the topic of swaps for a  
19 minute, but get ourselves out of the technical weeds and into  
20 this issue of manipulating the price. Now, Mr. Klein seemed to  
21 admit that his client manipulated the price of Mango relative  
22 to USDC and manipulated the oracle and made the price shoot up  
23 a thousand percent. You didn't hear anything contesting that  
24 was true.

25 Instead, the argument was, well, that's not really the



O4HMEIS5

Rebuttal - Mr. Burnett

1 price on Mango, not the price on Mango Markets. You have not  
2 heard that from any single witness in this case. That's just  
3 Mr. Klein saying something, and you don't need to treat  
4 arguments from the lawyers as evidence. You know the evidence,  
5 and the evidence is that that oracle price gets incorporated  
6 into Mango Markets. That is the settlement price that Mango  
7 Markets uses when it determines the price of the perpetual and  
8 who is winning and who is losing, just like we talked about  
9 earlier. The price comes from somewhere else, but it's brought  
10 on to Mango Markets and used to price the perpetuals. And the  
11 defendant, he manipulated that price. There is no dispute.

12 Now, Mr. Klein also ignored something else, which is  
13 that the actual underlying trades of Mango perpetuals also  
14 increased in price because of the defendant's misconduct. You  
15 saw Special Agent DeCapua show two charts that showed the  
16 actual trades of Mango perpetuals during the scheme shot up by  
17 over 700 percent. That was also because of the defendant's  
18 crime. So what you saw then is both the reference price of  
19 those contracts was going up because of the defendant's crime,  
20 and the settlement price of those contracts was going up  
21 because of the defendant's crime.

22 At the end of the day, this shouldn't be hard because  
23 this was the whole point. The whole point of the scheme was to  
24 make the price of the perpetuals go up because that's what was  
25 going to make the value of his assets look really, really big.

O4HMEIS5

Rebuttal - Mr. Burnett

1 That's what was going to let him trick the system into  
2 borrowing and stealing from the platform.

3 I want to touch now on this process of tricking the  
4 system, this idea called materiality that Mr. Klein talked  
5 about. Mr. Klein seems to think that, well, because the system  
6 let him do it, it's not material. It's just an automated  
7 system. It's a smart contract. That's exactly backwards.  
8 It's exactly backwards because he had to lie. He had to trick  
9 the system in order to take out the money that he took out.

10 I think this is actually easiest to think about if we  
11 take it out of the context of Mango Markets for a second and  
12 just think about something that's a little bit simpler.

13 Imagine there is a thief who goes and steals someone's  
14 bank account login information, something you would log into  
15 your bank account online for. That thief goes and sits at the  
16 computer and types in the stolen identity to log onto the  
17 person's bank account and then clicks the withdraw button to  
18 drain all the money out of that unsuspecting victim's bank  
19 account.

20 Now, what Mr. Klein would have you believe is, well,  
21 because the software code for the bank account can't stop him  
22 once he has entered that false information, it's not material.  
23 That's wrong. That's exactly backwards.

24 What's key -- it's the only thing that matters,  
25 really, is who is the right person who can access that bank

O4HMEIS5

Rebuttal - Mr. Burnett

1 account. He had to lie to access the bank account to drain the  
2 money. That's how you know it was capable of influencing the  
3 bank account. He couldn't get into the bank account unless he  
4 lied to it.

5 It's the same thing here. In order for the defendant  
6 to drain \$110 million of cryptocurrency from the system, he had  
7 to lie to it. He had to lie by inflating the value of his  
8 assets. Otherwise, he wouldn't have been able to withdraw that  
9 much money. And he had to lie by clicking the borrow button,  
10 because you can't borrow unless you click that borrow button.  
11 You know that his fraud was not only capable of influencing and  
12 tricking the smart contract, it was the two things that that  
13 smart contract cared about most, how much money you have and  
14 what are you trying to borrow, and the defendant lied about  
15 both of those things, and that's how he tricked the system into  
16 giving him the money.

17 One last thing on this materiality point. You heard  
18 Mr. Klein open his summation with that opening page, the one  
19 that says: I accept all risks to use the platform.

20 I expect you are going to hear from Judge Subramanian  
21 that disclaimers, disclaimers like that saying, I accept the  
22 risks, they can't render something like fraud or manipulation  
23 legal or immaterial as a matter of law, and of course not. Of  
24 course that's not the case. No one thinks when they click a  
25 generic, I accept the risks of using this box that they are

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Rebuttal - Mr. Burnett

1 signing up to get defrauded, that they are signing up for  
2 crime, that's not the way it works, and you heard the witnesses  
3 say that.

4 You heard Brian Smith, you heard Oliver Tonkin, you  
5 heard Tyler Shipe, people who used and built the platform  
6 explain to you that they didn't expect this kind of thing to  
7 happen, and of course they didn't. They didn't expect fraud.  
8 They didn't expect manipulation just because they clicked a  
9 little box the first time they used the platform saying, I  
10 accept risks.

11 Before I wrap up, I just want to touch briefly on this  
12 point about venue that Mr. Klein raised. Now, venue is  
13 basically is this the right place, the right courthouse for  
14 this case to be, and should it be here in New York City.

15 You are going to hear it's a different standard. We  
16 have to prove everything else in this case beyond a reasonable  
17 doubt, but venue is just a preponderance of the evidence.  
18 That's a 50/50, a little more than 50 percent is preponderance  
19 of the evidence.

20 But here you had clear and overwhelming evidence that  
21 acts in furtherance of the crime took place here in New York  
22 City.

23 You are going to hear that it doesn't matter if the  
24 defendant was here in New York City. As long as something the  
25 defendant caused to happen, even if it was by someone else, to

O4HMEIS5

Rebuttal - Mr. Burnett

1 further the crime that happened here, then that's sufficient to  
2 establish venue.

3 And you heard, with respect to AscendEX, every step of  
4 Mr. Eisenberg's fraudulent conduct happened in part here in New  
5 York because this was the main place where AscendEX was run out  
6 of.

7 Look at Jim Farrell's testimony if you need to. He  
8 explained to you that when Mr. Eisenberg opened up an account,  
9 that account appears here in New York. When Mr. Eisenberg  
10 deposited the money that he was going to use to manipulate the  
11 market, that was handled by the finance team here in New York.  
12 He explained that when Mr. Eisenberg's trading happened, those  
13 fraudulent trades were settled and cleared. That was all  
14 managed by the finance team here in New York. And you heard  
15 that Mr. Farrell was sitting in his office in New York when he  
16 got the call that they needed to freeze this account because  
17 they caught Mr. Eisenberg for what he was doing. That all  
18 happened here in New York and all of those acts were acts in  
19 furtherance of the crime. It was how he was carrying out the  
20 manipulation.

21 You also heard testimony from John Casey. He was the  
22 man from Poughkeepsie who came here earlier, and he told you  
23 that he saw the false price signal, that spike in price happen  
24 when he was sitting in Poughkeepsie. That's also in the  
25 Southern District of New York. And while that crime was going

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Rebuttal - Mr. Burnett

1 on, he was seeing the price spike, and he was trying to  
2 withdraw. He was trying to withdraw his money, but he couldn't  
3 do it. There was a victim right here in the district, too,  
4 which is another way you know that venue is proper here.

5 I'm about to sit down. When I'm done, Judge  
6 Subramanian will instruct you on the law for this case, and you  
7 should listen carefully because if any of us have gotten  
8 everything wrong, including me, what his word is goes.

9 Then you'll have your chance to go back and  
10 deliberate. When you go back there, focus on the evidence and  
11 use your common sense, and I submit you should ask yourselves a  
12 few simple questions to guide your deliberations.

13 First, did the defendant manipulate the market to make  
14 it look like he had something really valuable? Second, did he  
15 use that manipulation to trick Mango Markets into letting him  
16 borrow everyone else's cryptocurrency? Third, when he clicked  
17 that borrow button, and represented that he was borrowing, was  
18 he really borrowing or was he stealing? And, fourth, was his  
19 manipulation and lying, were those lies and manipulation the  
20 reason he was able to take out \$110 worth of cryptocurrency  
21 from the platform.

22 If the answers to those questions is yes, then I would  
23 suggest that's fraud. That's market manipulation. That's the  
24 core of the case.

25 Because, at the end of the day, the heart of this case

O4HMEIS5

1 is not about computer code, it isn't about what was  
2 technologically possible or not on Mango Markets. Just because  
3 something is possible doesn't make it legal. You know that and  
4 the defendant certainly knew it. This is a case about laws  
5 that go back way before cryptocurrency and even computers.  
6 It's about laws that protect people from fraud and  
7 manipulation. The defendant broke those laws. He is guilty.

8 THE COURT: Members of the jury, we will take a  
9 30-minute lunch at this point. We will come back, and I will  
10 instruct you as to the law in this case.

11 All rise for the jury.

12 (Jury not present)

13 THE COURT: Anything that we need to take up before we  
14 instruct the jury, Mr. Davis?

15 MR. DAVIS: No, your Honor.

16 THE COURT: Anything from the defense?

17 MR. KLEIN: No, your Honor.

18 THE COURT: We will see everyone back here at 2.

19 (Recess)

20 THE COURT: Do we have that exhibit list issue  
21 resolved? Do we have an exhibit list that can go back with the  
22 laptop?

23 MR. SMITH: Yes, your Honor.

24 THE COURT: Fantastic.

25 Is everyone ready to sit back and relax for a while?

O4HMEIS5

Charge

1 Mr. Hernandez, you have the printed copies of the  
2 charge and the verdict form?

3 THE DEPUTY CLERK: Yes, I do, your Honor.

4 THE COURT: Let's go get our jury.

5 (Jury present)

6 THE COURT: We have come to the final step before you  
7 begin your deliberations, and I will now instruct you on the  
8 law that you are to apply in this case. Get comfortable.

9 There is a lot here. So we are going to hand out  
10 copies of what I am going to read to you. You should pay  
11 attention to the instructions that I am giving you as I say it.  
12 However, I know that some people like to follow along in  
13 writing. That's how they take in information. It's easier for  
14 them. So each of you will have a copy of the instructions, and  
15 you can take that back with you into the jury room. However,  
16 if there is any difference or distinction between what's  
17 written there and what I tell you, it's what I'm telling you  
18 that is the instructions that you should follow, although I  
19 don't anticipate that there will be any differences between  
20 what you have in your hands and what I'll be telling you.

21 Just for reference, I am going to be starting from  
22 page 5 in what you have. I'll give you a second to turn there,  
23 if you'd like to.

24 You have now heard all of the evidence in this case,  
25 as well as the final arguments of the parties.



O4HMEIS5

Charge

1 My duty at this point is to instruct you as to the  
2 law. It is your duty to accept these instructions of law and  
3 apply them to the facts as you determine them.

4 On these legal matters, you must take the law as I  
5 give it to you. If an attorney has stated a legal principle  
6 different from any that I state to you in my instructions, it  
7 is my instructions that you must follow.

8 You should not single out any instruction as alone  
9 stating the law, but you should consider my instructions as a  
10 whole when you retire to deliberate in the jury room.

11 And you should know that you're going to be able to  
12 take a copy of these instructions into the jury room. It's  
13 what you have in your hands.

14 Your final role is to pass upon and decide the fact  
15 issues that are in this case. You, the members of the jury,  
16 are the sole and exclusive judges of the facts. You pass upon  
17 the weight of the evidence; you determine the credibility of  
18 the witnesses; you resolve such conflicts as there may be in  
19 the testimony, and you draw whatever reasonable inferences you  
20 decide to draw from the facts as you have determined them. I  
21 will later discuss with you how to pass upon the credibility,  
22 or believability, of the witnesses.

23 In determining the facts, you must rely upon your own  
24 recollection of the evidence. The evidence before you consists  
25 of the answers given by witnesses, the testimony they gave as

O4HMEIS5

Charge

1 you recall it, and the exhibits that were received in evidence.  
2 The evidence does not include questions. Only the answers are  
3 evidence. But you may not consider any answer that I directed  
4 you to disregard.

5 You may also consider the stipulations of the parties  
6 as evidence.

7 Since you are the sole and exclusive judges of the  
8 facts, I do not mean to indicate any opinion as to the facts or  
9 what your verdict should be. The rulings I have made during  
10 the trial are not any indication of my views of what your  
11 decision should be as to whether or not the guilt of the  
12 defendant has been proven beyond a reasonable doubt.

13 You are the exclusive judges of the facts, and you are  
14 to perform the duty of finding the facts without bias or  
15 prejudice as to any party.

16 As I said, in determining the facts, you must rely  
17 upon your own recollection of the evidence. What the lawyers  
18 have said in their opening statements, in their closing  
19 arguments, in their objections, or in their questions is not  
20 evidence.

21 If your recollection of the facts differs from the  
22 statements made in opening or closing, you should rely on your  
23 recollection. If a statement was made during an opening or  
24 summation and you find that there is no evidence to support the  
25 statement, you should disregard the statement.

O4HMEIS5

Charge

1 A question put to a witness is not evidence. It is  
2 only the answer that is evidence. Nor is anything I may have  
3 said during the trial or may say during these instructions with  
4 respect to a fact to be taken in substitution for your own  
5 independent recollection. What I say is not evidence.

6 Relatedly, do not conclude from any of my questions or  
7 any of my rulings on objections or anything else I have done  
8 during this trial that I have any view as to the credibility of  
9 the witnesses or how you should decide the case.

10 In addition, remember that it is the duty of a party  
11 to object when the other side offers testimony or other  
12 evidence that the party believes is not properly admissible.  
13 Therefore, you should draw no inference from the fact that  
14 there was an objection to any evidence. An objection is not  
15 evidence, nor should you draw any inference from the fact that  
16 I sustained or overruled an objection. Simply because I have  
17 permitted certain evidence to be introduced does not mean that  
18 I have decided on its importance or significance. That is for  
19 you to decide.

20 The personalities and the conduct of counsel are not  
21 in any way at issue. If, from their conduct at this trial, you  
22 formed opinions of any kind about any of the lawyers in this  
23 case, favorable or unfavorable, whether you approved or  
24 disapproved of their behavior, those opinions should not enter  
25 into your deliberations. The only issue is whether the

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Charge

1 government has proven each of the elements of the charged  
2 offenses beyond a reasonable doubt.

3 The fact that the prosecution is brought in the name  
4 of the United States of America entitles the government to no  
5 greater consideration than that accorded to any other party to  
6 a litigation. By the same token, it is entitled to no less  
7 consideration. All parties, whether government or individuals,  
8 stand as equals at the bar of justice.

9 Now I will instruct you on the presumption of  
10 innocence and the government's burden of proof in this case.  
11 The defendant has pleaded not guilty. By doing so, he denies  
12 the charges in the indictment. Thus, the government has the  
13 burden of proving the charges against the defendant beyond a  
14 reasonable doubt. The defendant is presumed innocent. A  
15 defendant does not have to prove his innocence. This  
16 presumption of innocence was in the defendant's favor at the  
17 start of the trial, continued in his favor throughout the  
18 entire trial, is in his favor even as I instruct you now, and  
19 continues in his favor during the course of your deliberations  
20 in the jury room.

21 The government has the burden of proof in this case.  
22 The presumption of innocence is removed as to the defendant if,  
23 and only if, you, as members of the jury, are satisfied that  
24 the government has sustained its burden of proving the guilt of  
25 the defendant beyond a reasonable doubt.

O4HMEIS5

Charge

1           The question that naturally arises is, what is a  
2 reasonable doubt? A reasonable doubt is a doubt based on your  
3 reason, your judgment, your experience, and your common sense.  
4 It is a doubt that a reasonable person has after carefully  
5 weighing all the evidence. It is a doubt founded in reason and  
6 arising out of the evidence in the case or lack of evidence.

7           Proof beyond a reasonable doubt does not mean proof  
8 beyond all possible doubt. It is practically impossible for a  
9 person to be absolutely and completely convinced of any  
10 disputed fact that, by its very nature, cannot be proven with  
11 mathematical certainty. The government's burden is to  
12 establish guilt beyond a reasonable doubt, not all possible  
13 doubt.

14           If, after a fair and impartial consideration of all  
15 the evidence, you can candidly and honestly say that you do  
16 have an abiding belief of the defendant's guilt, such a belief  
17 as a prudent person would not hesitate to act upon in important  
18 matters in the personal affairs of his or her own life, then  
19 you have no reasonable doubt, and under such circumstances it  
20 is your duty to convict. On the other hand, if, after a fair  
21 and impartial consideration of all the evidence, you can  
22 candidly and honestly say that you are not satisfied with the  
23 guilt of the defendant, that you do not have an abiding belief  
24 of the defendant's guilt, in other words, if you have such a  
25 doubt as would reasonably cause a prudent person to hesitate in

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Charge

1 acting in matters of importance in his or her own affairs, then  
2 you have a reasonable doubt, and in that circumstance it is  
3 your duty to acquit.

4 The government is not required to prove the essential  
5 elements of the offenses by any particular number of witnesses.  
6 The testimony of a single witness may be sufficient to convince  
7 you beyond a reasonable doubt of the existence of the essential  
8 elements of the offense you are considering if you believe that  
9 the witness has truthfully and accurately related what they  
10 have told you.

11 Now, there are two types of evidence that you may  
12 properly use in deciding whether the defendant is guilty or not  
13 guilty of the crimes with which he is charged.

14 One type of evidence is called direct evidence.  
15 Direct evidence of a fact in issue is presented when a witness  
16 testifies to that fact based on what he or she personally saw,  
17 heard, or otherwise observed through the five senses. The  
18 second type of evidence is circumstantial evidence.  
19 Circumstantial evidence is evidence that tends to prove a  
20 disputed fact indirectly by proof of other facts.

21 There is a simple example of circumstantial evidence  
22 that is often used in this courthouse. I think I have used  
23 this with you in this courthouse. Assume that when you came  
24 into the courthouse this morning, the sun was shining and it  
25 was a nice day outside. Also assume that the courtroom shades

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Charge

1 were drawn, and you could not look outside. Assume further  
2 that as you were sitting here, someone walked in with an  
3 umbrella that was dripping wet and then, a few moments later,  
4 somebody else walked in with a raincoat that was also dripping  
5 wet.

6 Now, because you could look outside the courtroom and  
7 you could not see whether it was raining, you would have no  
8 direct evidence of that fact. But, on the combination of facts  
9 that I have asked you to assume, it would be reasonable and  
10 logical for you to conclude that it was raining.

11 That is all there is to circumstantial evidence. You  
12 infer on the basis of your reason, experience, and common sense  
13 from one established fact the existence or the nonexistence of  
14 some other fact.

15 The matter of drawing inferences from facts in  
16 evidence is not a matter of guesswork or speculation. An  
17 inference is a logical, factual conclusion that you might  
18 reasonably draw from other facts that have been proven.

19 Many material facts, such as a person's state of mind,  
20 are not easily proven by direct evidence. Usually, such facts  
21 are established by circumstantial evidence and the reasonable  
22 inferences you draw. Circumstantial evidence may be given as  
23 much weight as direct evidence. The law makes no distinction  
24 between direct and circumstantial evidence. The law simply  
25 requires that before convicting a defendant, you must be

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Charge

1 satisfied of the defendant's guilt beyond a reasonable doubt,  
2 based on all of the evidence in the case.

3 During the trial you may have heard the parties use  
4 the term inference and in their arguments they have asked you  
5 to infer, on the basis of your reason, experience, and common  
6 sense, from one or more established facts, the existence of  
7 some other fact.

8 An inference is not a suspicion or a guess. It a  
9 reasoned, logical decision to conclude that a disputed fact  
10 exists on the basis of another fact that you know exists.

11 There are times when different inferences may be drawn  
12 from facts, whether proven by direct or circumstantial  
13 evidence. The government asks you to draw one set of  
14 inferences, while the defense asks you to draw another. It is  
15 for you, and you alone, to decide what inferences you will  
16 draw.

17 The process of drawing inferences from facts in  
18 evidence is not a matter of guesswork or speculation. An  
19 inference is a deduction or conclusion that you, the jury, are  
20 permitted, but not required, to draw from the facts that have  
21 been established by either direct or circumstantial evidence.  
22 In drawing inferences, you should exercise your common sense.

23 So while you are considering the evidence presented to  
24 you, you are permitted to draw, from the facts that you find to  
25 be proven, such reasonable inferences as would be justified in



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1 light of your experience.

2 In this case you have heard evidence in the form of  
3 stipulations of fact and testimony. A stipulation of fact is  
4 an agreement between the parties that a certain fact or set of  
5 facts are true, and you must regard such agreed facts as true.  
6 It is for you to determine the effect or weight to give to  
7 those agreed-upon facts. A stipulation of testimony is an  
8 agreement among the parties that, if called, a witness would  
9 have given certain testimony. You must accept as true the fact  
10 that the witness would have given the testimony. However, it  
11 is for you to determine the effect or weight to give that  
12 testimony.

13 If certain testimony or evidence was received for a  
14 limited purpose, you must follow the limiting instructions I  
15 have given and use the evidence only for the purpose I  
16 indicated.

17 You, as jurors, must decide this case based solely on  
18 the evidence presented here within the four walls of this  
19 courtroom. As I told you at the beginning of this case, you  
20 must not conduct any independent research about the case, the  
21 matters in the case, and the parties involved in the case. In  
22 other words, you should not consult dictionaries or reference  
23 materials, search the Internet, websites, blogs, social media  
24 outlets, or use any other electronic tools to obtain  
25 information about the case or to help you decide the case. You

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1 must not visit any location mentioned in the case for the  
2 purpose of investigating it. Please do not try to find out  
3 information from any source outside the confines of this  
4 courtroom.

5 You must not talk to anyone about this case or use  
6 these tools to communicate electronically with anyone about the  
7 case. This includes your family and friends. You may not  
8 communicate with anyone about the case on your cell phone,  
9 through email, instant messaging, text messaging, through any  
10 blog or website, through any Internet chat room, or by way of  
11 any other social networking platforms, including Facebook,  
12 Twitter, or X, TikTok, Instagram, threads, LinkedIn, Snapchat,  
13 and YouTube.

14 If you become aware that any other juror is violating  
15 this instruction, you should immediately bring it to my  
16 attention through my courtroom deputy, Mr. Hernandez, but  
17 please do not make it known to any other jurors.

18 Your verdict must be based solely upon the evidence  
19 developed at trial or the lack of evidence.

20 It would be improper for you to consider, in reaching  
21 your decision as to whether the government sustained its burden  
22 of proof, any personal feelings you may have about the  
23 defendant's race, religion, national origin, sex, or age. As I  
24 have explained to you, all persons are entitled to the  
25 presumption of innocence, and the government has the burden of

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Charge

1 proof.

2 It would be equally improper for you to allow any  
3 feelings you might have about the nature of the crimes  
4 committed or charged to interfere with your decision-making  
5 process.

6 To repeat, your verdict must based exclusively upon  
7 the evidence or the lack of evidence in this case.

8 I also caution you that, under your oath as jurors,  
9 you cannot allow to enter into your deliberations any  
10 consideration of the punishment that may be imposed upon the  
11 defendant if he is convicted. The duty of imposing a sentence  
12 in the event of conviction rests exclusively with the Court,  
13 and the issue of punishment may not affect your deliberations  
14 as to whether the government has proven the defendant's guilt  
15 beyond a reasonable doubt.

16 Under your oath as jurors, you are not to be swayed by  
17 sympathy. You are to be guided solely by the evidence in this  
18 case, and the crucial question that you must ask yourselves as  
19 you sift through the evidence is, has the government proven the  
20 guilt of the defendant beyond a reasonable doubt? It is for  
21 you alone to decide whether the government has proven that the  
22 defendant is guilty of the crimes charged solely on the basis  
23 of the evidence and subject to the law as I charge you. It  
24 must be clear to you that once you let fear or prejudice or  
25 bias or sympathy interfere with your thinking, there is a risk

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Charge

1 that you will not arrive at a true and just verdict.

2 If you have a reasonable doubt as to the defendant's  
3 guilt, you should not hesitate for any reason to return a  
4 verdict of not guilty. But on the other hand, if you should  
5 find that the government has met its burden of proving the  
6 defendant's guilt beyond a reasonable doubt, you should not  
7 hesitate because of sympathy or any other reason to return a  
8 verdict of guilty.

9 The defendant, Avraham Eisenberg, has been formally  
10 charged in an indictment. An indictment is not evidence. As I  
11 instructed you at the outset of the case, the indictment is a  
12 charge or accusation. It merely describes the charges made  
13 against a defendant. An indictment is a formal method of  
14 bringing a case into court for trial and determination by a  
15 jury. It creates no presumption that a crime was committed,  
16 and no inference of any kind may be drawn from an indictment.  
17 You may not consider an indictment as any evidence of the  
18 defendant's guilt. The fact that the defendant is the subject  
19 of this indictment and is on trial here may not be used against  
20 him in any way whatsoever.

21 I will first summarize the offenses charged in the  
22 indictment and then explain in detail the elements of each of  
23 the offenses.

24 The indictment contains three counts. Each count  
25 charges a separate offense or crime. You must, therefore,

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Charge

1 consider each count separately, and you must return a separate  
2 verdict on each count.

3 Count One charges the defendant with committing  
4 commodities fraud by engaging in a scheme to fraudulently  
5 obtain approximately \$110 million worth of cryptocurrency from  
6 a cryptocurrency exchange called Mango Markets and its  
7 investors.

8 Count Two charges the defendant with committing  
9 commodities manipulation and attempted commodities manipulation  
10 by engaging in a scheme involving the intentional and  
11 artificial manipulation of the price of MNGO perpetuals on  
12 Mango Markets.

13 And Count Three charges the defendant with committing  
14 wire fraud by engaging in a scheme to fraudulently obtain  
15 cryptocurrency from Mango Markets and its users.

16 Mr. Eisenberg denies the government's charges, Counts  
17 One through Three. With respect to Counts One and Three, the  
18 commodities fraud and wire fraud, Mr. Eisenberg did not intend  
19 to violate the law or defraud anyone and denies that he did so.  
20 With respect to Count Two, commodities manipulation,  
21 Mr. Eisenberg denies that he either intended to or did create  
22 an artificial market price for the MNGO perpetual on Mango  
23 Markets.

24 The indictment alleges that certain conduct occurred  
25 on or about various dates. It is not necessary, however, for

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Charge

1 the government to prove that any conduct alleged occurred  
2 exactly when the indictment alleges. As long as the conduct  
3 occurred around any dates the indictment alleges it occurred,  
4 that is sufficient.

5 Now, you must return a separate verdict of guilty or  
6 not guilty for each count charged. Whether you find the  
7 defendant guilty or not guilty as to one offense should not  
8 affect your verdict as to any other offense. You must analyze  
9 and evaluate the evidence separately as to each count.

10 Count One, commodities fraud.

11 Count One charges the defendant with committing  
12 commodities fraud. The indictment alleges that: In or about  
13 October of 2022, the defendant carried out a scheme to  
14 fraudulently obtain approximately \$110 million worth of  
15 cryptocurrency from a cryptocurrency exchange called Mango  
16 Markets and its users.

17 To meet its burden of proof with respect to Count One,  
18 the government must prove each of the following three elements  
19 beyond a reasonable doubt:

20 First, that the defendant did any one or more of the  
21 following: (a) employed a manipulative device, scheme, or  
22 artifice to defraud; (b) made an untrue statement of a material  
23 fact or omitted to state a material fact which made what was  
24 said, under the circumstances, misleading; or (c) engaged in an  
25 act, practice, or course of business that operated, or would

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Charge

1 operate, as a fraud or deceit upon any person or entity.

2 Second, the defendant's fraudulent scheme was in  
3 connection with a swap:

4 Third, that the defendant acted knowingly, willfully,  
5 and with an intent to defraud.

6 Count One, commodities fraud: First element.

7 The first element of commodities fraud is that the  
8 defendant did any one or more of the following: (1) employed a  
9 manipulative device, scheme, or artifice to defraud; (2) made  
10 an untrue statement of a material fact or omitted to state a  
11 material fact which made what was said, under the  
12 circumstances, misleading; or (3) engaged in an act, practice,  
13 or course of business that operated, or would operate, as a  
14 fraud or deceit upon any person or entity.

15 It is not necessary for the government to prove all  
16 three types of these fraudulent acts. Any one is sufficient to  
17 satisfy this element of the offense. However, you must be  
18 unanimous as to which type of fraudulent act the defendant  
19 committed, and the government must prove that the defendant  
20 committed that type of fraudulent act beyond a reasonable  
21 doubt.

22 I will now explain a number of terms used in this  
23 first element.

24 Count One, commodities fraud: First element.  
25 Manipulative device, scheme or artifice to defraud.

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Charge

1 As I just instructed you, the first type of fraudulent  
2 act is employing a manipulative device, scheme, or artifice to  
3 defraud.

4 A device, scheme or artifice is a plan for the  
5 accomplishment of any objective. A device, scheme, or artifice  
6 to defraud is any plan or course of action calculated to wrong  
7 another by dishonest methods, including the deprivation of  
8 something of value by trick, deceit, chicanery, or  
9 overreaching.

10 As for what is manipulative, manipulation is a term of  
11 art when used in connection with the financial markets.  
12 Manipulation refers to intentional or willful conduct designed  
13 to deceive or defraud by controlling or artificially affecting  
14 some type of price. An act is manipulative if it is designed  
15 to deceive or defraud others by sending a false pricing signal  
16 to the market. Quantitatively, a transaction is not  
17 manipulative when the market is fully aware of the terms and  
18 purposes behind a transaction, as that transaction will not  
19 mislead or deceive the market. Keep in mind that the mere fact  
20 that a transaction affected prices does not render it  
21 manipulative.

22 An act can be manipulative even if it is conducted on  
23 the open market or through ordinary market activity, such as by  
24 placing an order to buy or sell, or by actually buying and  
25 selling. In some cases, a defendant's intent to manipulate a



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Charge

1 price is all that distinguishes legitimate trading from  
2 manipulative trading. Similarly, in some cases, the  
3 determination of whether an activity is manipulative can only  
4 be made by placing the activity in context and considering  
5 whether it is part of a pattern of trading activity. What  
6 matters is whether the defendant has an intent to inject a  
7 false price signal into the market or to mislead others by  
8 artificially affecting the price.

9 If there are two purposes for a transaction, one of  
10 which is not to deceive or defraud others, it is not  
11 manipulative, even if the defendant also had an intent to  
12 deceive or defraud. On the other hand, if the transaction  
13 would not have been done at the same time and in the same  
14 manner, except for the intent to deceive or defraud, then the  
15 transaction is manipulative. Thus, if the government proves  
16 beyond a reasonable doubt that but for an intent to deceive or  
17 defraud, the defendant would not have engaged in the  
18 transactions at issue in this case, at the times and in the  
19 amounts he did, then those transactions were manipulative.

20 Count One commodities fraud: First element. Untrue  
21 statements.

22 Recall that, for the first element of Count One, there  
23 are three ways the government can prove the element. I have  
24 just described the first way, a manipulative device, artifice,  
25 or scheme to defraud. The second way that the government can

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Charge

1 establish the first element is by proving that the defendant  
2 made an untrue statement of material fact, or omitted to state  
3 a material fact which made what was said misleading.

4 A statement is false if it is untrue when made and was  
5 then known to be untrue by the person making it. A statement  
6 is fraudulent if it was made with the intention to wrong  
7 another by dishonest methods, including the deprivation of  
8 something of value by trick, deceit, chicanery, or  
9 overreaching. A statement may also be false if it contains  
10 half truths or if it conceals material facts in a manner that  
11 makes what is said or represented deliberately misleading.  
12 This includes statements that may be literally true but that  
13 nevertheless create a materially misleading impression.

14 Count One, commodities fraud. First element. Act,  
15 practice, or course of business that operated, or would  
16 operate, as a fraud or deceit.

17 I have now described the first two ways that the  
18 government can establish the first element of commodities  
19 fraud. The third way that the government can establish the  
20 first element is by proving that the defendant engaged in an  
21 act, practice, or course of business that operated or would  
22 operate as a fraud or deceit.

23 (Continued on next page)  
24  
25

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Charge

1           THE COURT: An act, practice, or course of business  
2 that operated or would operate as a fraud or deceit means,  
3 consistent with the prior instructions I have provided to you,  
4 all efforts to wrong another by dishonest methods, including  
5 the deprivation of something of value by trick, deceit,  
6 chicanery or overreaching. The fraud or deceit need not  
7 involve a specific oral or written statement.

8           Count One – Commodities Fraud: First element –  
9 materiality.

10           I have now described the three types of fraudulent  
11 acts the government can prove to establish the crime of  
12 commodities fraud that the defendant: One, employed a  
13 manipulative device, scheme, or artifice to defraud; two, made  
14 an untrue statement of a material fact, or omitted to state a  
15 material fact, which made what was said under the circumstances  
16 misleading; or three, engaged in an act, practice, or course of  
17 business that operated, or would operate, as a fraud or deceit  
18 upon any person or entity.

19           For each of these fraudulent acts, the government must  
20 additionally prove beyond a reasonable doubt that the  
21 defendant's acts related to a material fact or matter. We use  
22 the word "material" to distinguish between those facts or  
23 matters that we care about and those that are of no real  
24 importance. A material fact is one that a reasonable person  
25 would consider important in making a decision and that is

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Charge

1 capable of influencing that decision. That means that if you  
2 find a particular act of the defendant to have been fraudulent,  
3 before you can find that act to be material, you must also find  
4 beyond a reasonable doubt that the fraudulent act was one that  
5 would have been important to a reasonable person in making a  
6 decision.

7 Any testimony that you may have heard from any witness  
8 with respect to whether a particular fact would or would not  
9 have been important reflects that witness's individual views.  
10 Although you may consider such testimony, it is not  
11 controlling. It is for you to determine whether a particular  
12 fact would have been important to a reasonable person.

13 When we say "reasonable person," we are referring to a  
14 person of ordinary intelligence. Here, we are referring to a  
15 person of ordinary intelligence in the position of Mango  
16 Markets or its users. Because a question focuses on a person  
17 of ordinary intelligence, it does not matter whether the  
18 intended victims were careless, gullible, or even negligent, or  
19 that they might have uncovered the defendant's act on their own  
20 had they probed more deeply, because the law protects the  
21 gullible and unsophisticated as well as the experienced market  
22 participant.

23 I have now instructed you on the three types of  
24 fraudulent acts that the government bears the burden to prove  
25 to establish the first element of Count One.

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Charge

1 Now that I have gone through them, I remind you that  
2 any one will be sufficient to satisfy this element of the  
3 offense. You must, however, be unanimous as to which type of  
4 fraudulent act or acts the defendant committed beyond a  
5 reasonable doubt.

6 With respect to all three types of fraudulent acts, it  
7 is not necessary for the government to prove that the defendant  
8 succeeded in defrauding another person, or that any person lost  
9 money or property. Nor do you need to find that the defendant  
10 profited from the scheme. You must focus on whether the  
11 defendant engaged in the act as I have described, not the  
12 consequences of that act.

13 Count One – Commodities Fraud. Second element – Swap.

14 The second element of commodities fraud is that the  
15 defendant committed his fraudulent act in connection with a  
16 swap. Here the government contends that the MNGO perpetuals  
17 involved in the alleged scheme were swaps.

18 A "swap" includes any agreement, contract, or  
19 transaction that provides for an exchange of payments based on  
20 the value of one or more rates, currencies, commodities,  
21 securities, indices, quantitative measures, or economic  
22 interests, or property of any kind, and that transfers, in  
23 whole or in part, the risk of changes in value of the things  
24 underlying the swap without actually exchanging an asset that  
25 incorporates the financial risks so transferred.

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1 Count One – Commodities Fraud: Second Element – Swaps  
2 Covered by the Commodities Laws.

3 If you find that the government has proven beyond a  
4 reasonable doubt that MNGO perpetuals are swaps, as I defined  
5 that term a moment ago, you must then determine whether they  
6 are swaps that are covered by the commodities laws.

7 To find that MNGO perpetuals are swaps covered by the  
8 commodities laws, you must find beyond a reasonable doubt at  
9 least one of the following:

10 First, that MNGO perpetuals are based in part on the  
11 value of USDC, and that USDC is a currency or a financial or  
12 economic interest, or property of any kind; or

13 Second, that MNGO perpetuals are based in part on any  
14 rate, index, or quantitative measure, other than the price of  
15 MNGO or of a narrow-based security index.

16 A narrow-based security index is an index or a group  
17 of nine or fewer securities, including any interest therein, or  
18 based on the value therefrom. A security is an investment of  
19 money in a common enterprise with the expectation of profits to  
20 be derived from the efforts of others. For these purposes, you  
21 may assume that MNGO is a security. An interest is a right,  
22 title, or legal share in something.

23 If you find one of these two things beyond a  
24 reasonable doubt, then MNGO perpetuals are swaps covered by the  
25 commodities laws. If you find that the government has not

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Charge

1 proved either of these two things beyond a reasonable doubt,  
2 then you should acquit Mr. Eisenberg as to Count One.

3 Count One – Commodities Fraud: Second Element – In  
4 Connection With.

5 Next, you must find beyond a reasonable doubt that the  
6 defendant's fraudulent act was in connection with a swap  
7 covered by the commodities laws. A fraudulent act is in  
8 connection with that swap if it has some meaningful  
9 relationship to that swap, or if the fraudulent act's  
10 accomplishment necessarily involves that swap. However, the  
11 "in connection with" requirement is not so broad as to convert  
12 every instance of fraud that is incidentally related to a swap  
13 into a violation of the commodities laws.

14 Let me provide you with some additional guidance in  
15 applying this element here. Here, the government has alleged  
16 that MNGO perpetuals are swaps covered by the commodities laws.  
17 In assessing this element, you should consider whether the  
18 defendant's allegedly fraudulent act necessarily involved MNGO  
19 perpetuals and not simply the MNGO spot market. In determining  
20 whether the defendant's fraudulent act was in connection with  
21 MNGO perpetuals, you should consider whether the defendant's  
22 act necessarily involved MNGO perpetuals.

23 Count One – commodities Fraud: Third Element.

24 The third element of commodities fraud is the  
25 defendant participated in the fraudulent act knowingly,

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Charge

1 willfully, and with the intent to defraud.

2 To act knowingly means to act voluntarily and  
3 deliberately rather than mistakenly or inadvertently.

4 To act willfully means to act voluntarily and with a  
5 wrongful purpose. That is, with a purpose to disobey or  
6 disregard the law. It is not necessary the defendant knew he  
7 was violating a particular law. It is enough if he was aware  
8 that what he was doing was, in general, unlawful.

9 To act with intent to defraud means to act knowingly  
10 and with an intent to deceive. Here, it is not sufficient that  
11 the defendant knew his transactions would affect the price of  
12 MNGO perpetuals. Instead, he must have made those transactions  
13 for the purpose of defrauding other market participants.

14 A defendant does not act willfully or with intent to  
15 defraud if he honestly believes that his actions were proper.  
16 Consequently, a defendant's good faith is a complete defense to  
17 the charge. The defendant has no burden to establish good  
18 faith. The burden is on the government to prove fraudulent  
19 intent, and thus a lack of good faith beyond a reasonable  
20 doubt.

21 However, an honest belief on the part of the defendant  
22 that ultimately everything would work out would not necessarily  
23 mean the defendant acted in good faith. If the defendant  
24 knowingly and willfully participated in the scheme with intent  
25 to deceive, an honest belief that others ultimately would not



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Charge

1 be harmed will not excuse his conduct.

2 Direct proof of knowledge and fraudulent intent is  
3 almost never available. It would be a rare case where it could  
4 be shown that a person wrote or stated that he committed an act  
5 with fraudulent intent. Such direct proof is not required.  
6 Instead, the ultimate facts of knowledge and intent, though  
7 subjective, may be established by circumstantial evidence,  
8 based upon a person's word, his conduct, his acts, and all the  
9 surrounding circumstances disclosed by the evidence, and the  
10 rational or logical inferences that may be drawn from them.  
11 You may also infer, but are not required to infer, that people  
12 intend the natural and probably consequences of their actions.  
13 As I instructed you earlier, circumstantial evidence, if  
14 believed, is of no less value than direct evidence.

15 Count Two – commodities manipulation.

16 I will now turn to Count Two, which charges defendant  
17 with committing commodities manipulation and attempted  
18 commodities manipulation. Here, the government argues that the  
19 defendant engaged in manipulation, and attempted manipulation  
20 of swaps by artificially inflating the price of MNGO perpetuals  
21 on Mango Markets.

22 Let me begin with commodities manipulation and then  
23 later turn to attempted commodities manipulation. With respect  
24 to commodities manipulation, to sustain its burden of proof  
25 with respect to the offense charged in Count Two, the

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Charge

1 government must prove beyond a reasonable doubt the following  
2 four elements:

3 First, the defendant possessed an ability to influence  
4 the price of a swap, which here refers to the prices of MNGO  
5 perpetuals on Mango Markets;

6 Second, an artificial price of a swap existed;

7 Third, the defendant caused the artificial price; and

8 Fourth, the defendant specifically intended to  
9 manipulate.

10 I will discuss each in turn.

11 Count Two – Commodities Manipulation: First Element –  
12 Ability to influence Prices.

13 The first element of commodities manipulation is that  
14 the defendant had the ability to influence the price of a swap.  
15 Here, this means that the government must prove beyond a  
16 reasonable doubt that the defendant had the ability to  
17 influence the prices of MNGO perpetuals on Mango Markets. I  
18 have previously instructed you on the definition of "swap," and  
19 you should initially determine, as you did in relation to Count  
20 One, whether the government has proven beyond a reasonable  
21 doubt that the MNGO perpetuals are swaps covered by the  
22 commodities laws.

23 If you find beyond a reasonable doubt that they are  
24 swaps covered by the commodities laws, then you must find that  
25 defendant, through his conduct, had the ability to

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Charge

1 intentionally alter, change, or influence the price of MNGO  
2 perpetuals on Mango Markets. There are many ways that a person  
3 can have the ability to influence prices. Factors that you may  
4 consider include, but are not limited to, the size of the  
5 defendant's positions, the liquidity in the relevant markets,  
6 the magnitude and timing of the defendant's trading, including  
7 whether the defendant engaged in trading in a concentrated  
8 manner and whether the defendant's trading in fact influenced  
9 prices.

10 Count Two – Commodities Manipulation: Second element  
11 – Artificial Price.

12 With respect to the second element, you must determine  
13 whether the government has proven that the price of MNGO  
14 perpetuals was artificial.

15 While there is no universally accepted measure or test  
16 of price artificiality, generally, a price is artificial if it  
17 was caused by some mechanism other than the basic forces of  
18 supply and demand, meaning that a price that sends a false  
19 signal to the market. A price is not artificial merely because  
20 it has been affected by a market participant's trading – even a  
21 large market participant – because price movements are expected  
22 to be affected by orders and trades in the marketplace. The  
23 question is whether the government has proven beyond a  
24 reasonable doubt that the price of MNGO perpetuals was caused  
25 by illegitimate forces, such as making false or misleading

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Charge

1 statements to the market, or by actions taken, including  
2 trading, that otherwise distorted estimates of the underlying  
3 economic value of the MNGO perpetuals.

4 Count Two – Commodities Manipulation: Third element –  
5 Causation.

6 The third element of commodities manipulation that the  
7 government must prove beyond a reasonable doubt is that the  
8 defendant caused the artificial prices of MNGO perpetuals. To  
9 find that the defendant caused the artificial prices, you must  
10 find that those prices would not have existed on the date at  
11 issue, but for the defendant's conduct. To make this finding,  
12 you do not need to find that the defendant's conduct was the  
13 only factor that brought about the artificial prices. It can  
14 be sufficient if the defendant's conduct caused the artificial  
15 prices in combination with other factors, so long as you find  
16 that the artificial prices would not have existed on the date  
17 they did absent the defendant's conduct.

18 Count Two – Commodities Manipulation: Fourth element  
19 – Intent.

20 For the fourth element, the government must prove  
21 beyond a reasonable doubt that Mr. Eisenberg special intended  
22 to cause the MNGO perpetuals to have an artificial price. It  
23 is not enough that the government show that Mr. Eisenberg  
24 entered into a transaction to move the MNGO spot price knowing  
25 it would have the effect of changing the price of the MNGO

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1     perpetuals.  Rather, the government must prove that  
2     Mr. Eisenberg's purpose or conscious object was to create an  
3     artificial price for the MNGO perpetuals.

4             Count Two – Commodities Manipulation:  Attempted  
5     Commodities Manipulation – Elements.

6             The instructions I just gave you were for commodities  
7     manipulation.  As I previously instructed you, the defendant is  
8     also charged in Count Two with attempted commodities  
9     manipulation.  Accordingly, you may separately find the  
10    defendant guilty of the offense charged in Count Two if you  
11    find that the government has proven beyond a reasonable doubt  
12    that the defendant committed attempted commodities  
13    manipulation, even if no artificial price was in fact created.

14            With respect to attempted commodities manipulation, to  
15    sustain its burden of proof with respect to the offense charged  
16    in Count Two, the government must prove beyond a reasonable  
17    doubt the following two elements:

18            First, the defendant specifically intended to  
19    manipulate the price of a swap, which here refers to  
20    manipulating the price of MNGO op Mango Markets; and

21            Second, the defendant took a substantial step towards  
22    committing that crime.

23            I will discuss each in turn.

24            Count Two – Commodities Manipulation:  Attempted  
25    Commodities Manipulation – First Element

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1           The first element of attempted commodities  
2 manipulation that the government must prove beyond a reasonable  
3 doubt is that the defendant acted with the specific intent to  
4 manipulate the price of a swap. I have previously instructed  
5 you on the meaning of intent to manipulate and of a swap  
6 covered by the commodities laws in connection with my  
7 instructions on commodities manipulation. You should follow  
8 those same instructions when considering the first element of  
9 attempted commodities manipulation.

10           Count Two – Commodities Manipulation: Attempted  
11 Commodities Manipulation – Second Element.

12           The second element of attempted commodities  
13 manipulation is that the defendant took an overt act in  
14 furtherance of carrying out the crime. Mere intention to  
15 commit a crime does not amount to an attempt. To convict the  
16 defendant of an attempt, you must find beyond a reasonable  
17 doubt that he also took some overt action that was a  
18 substantial step toward the commission of that crime.

19           In determining whether the defendant's actions  
20 amounted to a substantial step toward the commission of the  
21 crime, it is necessary to distinguish between mere preparation  
22 on the one hand and the actual doing of the criminal deed on  
23 the other. Mere preparation, which may consist of planning the  
24 offense or devising, obtaining, or arranging a means for its  
25 commission is not an attempt, although some preparations may

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1 amount to an attempt. The acts of a person who intends to  
2 commit a crime will constitute an attempt when the acts  
3 themselves clearly indicate an intent to commit the crime, and  
4 the acts are a substantial step in the course of conduct  
5 planned to culminate in the commission of the crime.

6 Count Three.

7 Count Three – Wire Fraud Elements.

8 I will now turn to Count Three, which charges the  
9 defendant with committing wire fraud. As I said earlier, Count  
10 Three charges that the defendant devised and participated in a  
11 scheme to fraudulently obtain cryptocurrency from Mango  
12 Markets. To sustain its burden of proof with respect to the  
13 offense charged in Count Three, the government must prove  
14 beyond a reasonable doubt the following three elements:

15 First, that there was a scheme or artifice to defraud,  
16 or to obtain money or property, by materially false and  
17 fraudulent pretenses, representations, or promises;

18 Second, that the defendant knowingly participated in  
19 the scheme or artifice to defraud with knowledge of its  
20 fraudulent nature and with specific intent to defraud;

21 Third, that in execution of that scheme, the defendant  
22 used or caused the use of interstate wires.

23 I will discuss each in turn.

24 Count Three – Wire Fraud: First Element – Scheme or  
25 Artifice to Defraud.

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1 As to the first elements of wire fraud, a scheme or  
2 artifice to defraud is any plan, device, or course of action to  
3 deprive another of money or property by means of false or  
4 fraudulent pretenses, representations, or promises. It is, in  
5 other words, a plan to deprive another person of money or  
6 property by trick, deceit, deception, swindle, or overreaching.

7 A pretense representation or promise is false if it is  
8 untrue when made and was then known to be untrue by the person  
9 making it. A pretense, representation, or promise is  
10 fraudulent if it was falsely made with the intent to deceive.  
11 Deceitful statements of half truths, and the concealment of  
12 material facts may also constitute false or fraudulent  
13 statements under the statute.

14 As I have previously explained, we use the word  
15 "material" to distinguish between the kinds of statements we  
16 care about and those that are of no real importance. A  
17 material fact is one that a reasonable person would consider  
18 important in making a decision and that is capable of  
19 influencing that decision. That means that if you find a  
20 particular statement of fact or omission to have been  
21 untruthful or misleading, before you could find that statement  
22 or omission to be material, you must also find beyond a  
23 reasonable doubt that the statement or omission was one that  
24 would have been important to a reasonable person in making a  
25 decision.



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1 Any testimony that you may have heard from any witness  
2 with respect to whether a particular fact would or would not  
3 have been important reflects that witness's individual views.  
4 Although you may consider such testimony, it is not  
5 controlling. It is for you to determine whether a particular  
6 fact would have been important to a reasonable person.

7 When we say "reasonable person," we are referring to a  
8 person of ordinary intelligence in the position of Mango  
9 Markets or its users. However, because the question focuses on  
10 a person of ordinary intelligence, it does not matter whether  
11 the intended victims were careless, gullible, or even  
12 negligent, or that they might have uncovered the scheme on  
13 their own had they probed more deeply because the law protects  
14 the gullible and unsophisticated, as well as the experienced  
15 market participant.

16 The government is not required to prove that the  
17 scheme or artifice actually succeeded. That is that an  
18 intended victim actually relied upon any false statement or  
19 suffered any loss or that the defendant realized any gain.

20 In addition to proving that a pretense,  
21 representation, or promise was false or fraudulent and related  
22 to a material fact, in order to establish a scheme to defraud,  
23 the government must prove that the alleged scheme or artifice  
24 contemplated wrongly depriving another of money or property,  
25 even if only temporarily. It is not necessary, however, that

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1 the person or entity whose money or property was targeted be  
2 the same person or entity that the defendant sought to deceive  
3 through the scheme or artifice. Furthermore, as I have noted,  
4 it is not necessary that the government prove that the  
5 defendant actually realized any gain from the scheme or  
6 artifice, or that the intended victim actually suffered any  
7 loss.

8 A scheme or artifice to defraud need not be shown by  
9 direct evidence, but may be established by all the  
10 circumstances and facts in this case. If you find beyond a  
11 reasonable doubt that a scheme or artifice to defraud did  
12 exist, you next should consider the second element of wire  
13 fraud.

14 Count Three – Wire Fraud: Second Element – Intent.

15 The second element that the government must prove  
16 beyond a reasonable doubt is that the defendant participated in  
17 the scheme or artifice to defraud knowingly and with a specific  
18 intent to defraud.

19 As I have instructed you previously, to act knowingly  
20 means to act voluntarily and deliberately rather than  
21 mistakenly or inadvertently.

22 In the context of wire fraud, intent to defraud means  
23 to act knowingly and with specific intent to deceive for the  
24 purpose of causing some financial or property loss to another.  
25 Thus, the defendant acted with an intent to defraud in the

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1 context of wire fraud if he engaged or participated in the  
2 fraudulent scheme with awareness of its fraudulent or deceptive  
3 character, with an intention to be involved in the scheme to  
4 defraud and help it succeed, and with the purpose of obtaining  
5 money or property from a victim, or depriving a victim of money  
6 or property, even temporarily.

7 The government, however, need not prove that any  
8 intended victim was actually harmed, or that such harm, as I  
9 have just described it, was intended by the defendant. Actual  
10 financial harm includes depriving someone of the real and  
11 immediate control over the use of assets. Thus, even if the  
12 defendant believed money obtained by fraudulent means would one  
13 day be repaid, and therefore believed that ultimately no harm  
14 would come to the owner of the funds, his intention of  
15 eventually to repay is no defense.

16 Because an essential element of wire fraud is intent  
17 to defraud, it follows that good faith on the part of the  
18 defendant is a complete defense to a charge of wire fraud. I  
19 have previously instructed you on the meaning on good faith in  
20 instructing you on Count One, and you should use the same  
21 definition with respect to Count Three. As I have previously  
22 instructed you, the defendant has no burden to establish a  
23 defense of good faith. The burden is on the government to  
24 prove fraudulent intent and the consequent lack of good faith  
25 beyond a reasonable doubt. If the defendant participated in

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1 the scheme to defraud, then a belief by the defendant, if such  
2 a belief existed, that ultimately everything would work out so  
3 that no one would lose any money does not mean the defendant  
4 acted in good faith.

5 As I mentioned before, direct proof of knowledge and  
6 fraudulent intent is almost never available. It would be a  
7 rare case where it could be shown that a person wrote or stated  
8 that as of a given time in the past, he committed an act with  
9 fraudulent intent. Such direct proof is not required.  
10 Instead, the ultimate facts of knowledge and intent, those  
11 subjective, may be established by circumstantial evidence based  
12 upon a person's words, his conduct, his acts, and all the  
13 surrounding circumstances disclosed by the evidence, and the  
14 rational or logical inferences that may be drawn from them.

15 To conclude on this element, if you do not find beyond  
16 a reasonable doubt that the defendant was a knowing participant  
17 in the scheme or artifice to defraud, or that he had the  
18 specific intent to defraud, you should find the defendant not  
19 guilty. On the other hand, if you find that the government has  
20 established beyond a reasonable doubt not only the first  
21 element – namely, the existence of the scheme or artifice to  
22 defraud – but also the second element, intent, you next should  
23 consider the third and final element of wire fraud.

24 Count Three – Wire Fraud: Third element – Interstate  
25 Wire.

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1           The third and final element the government must  
2       establish beyond a reasonable doubt with respect to Count Three  
3       is that an interstate wire, including, for example,  
4       transactions or communications over the internet was used in  
5       furtherance of the scheme or artifice to defraud within the  
6       period of the scheme charged in Count Three.

7           A wire communication need not itself be fraudulent.  
8       Indeed, it may be completely innocent as long as it was made in  
9       furtherance of the scheme or artifice to defraud. To be in  
10      furtherance of the scheme or artifice, the wire communication  
11      must be incident to an essential part of this scheme or  
12      artifice to defraud and must have been caused, directly or  
13      indirectly, by the defendant. The wire communication  
14      requirement can be satisfied. However, even if the wire  
15      communication was done by the person being defrauded or some  
16      other innocent party. When a person does an act with knowledge  
17      that the use of the wires will follow in the ordinary course or  
18      where such use can reasonably be foreseen by that person, even  
19      though he does not actually intend such use, that nonetheless  
20      causes the wires to be used. Thus, there is no requirement  
21      that the defendant specifically authorized otherwise to make a  
22      communication by wire.

23           The government must prove beyond a reasonable doubt  
24      that the wire communication was interstate or international.  
25      To do so, the government may prove that a wire communication

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1 whose origin and destination were within one state was routed  
2 through another state, or that the wire communication passed  
3 between two or more states or between the United States and a  
4 foreign country. The government is not required to prove that  
5 the defendant knew or could foresee the interstate or  
6 international nature of the wire communication.

7 Now, for each of Count One, Count Two, and Count  
8 Three, the government must also prove beyond a reasonable doubt  
9 that the charged offense had a sufficient relationship to the  
10 United States. The government may satisfy its burden to show a  
11 sufficient relationship to the United States in one of two  
12 ways. The government can prove that the conduct relevant to  
13 the offenses occurred in the United States, which includes  
14 Puerto Rico, or with respect to Counts One and Two only, the  
15 government can prove that an activity related to the offense  
16 had a direct and significant connection with activities in  
17 commerce of the United States.

18 Venue.

19 In addition to all the elements I have just described,  
20 you must also consider the issue of venue, namely, whether an  
21 act in furtherance of each of the charged crimes occurred  
22 within the Southern District of New York. The Southern  
23 District of New York includes Manhattan, the Bronx, Dutchess  
24 County, including Poughkeepsie, and several other counties  
25 north of the Bronx.

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1 Venue refers to the fact that the government must  
2 prove that a charge was properly brought in this court as  
3 opposed to a different federal court. You'll determine the  
4 satisfaction of the venue requirement separately for each  
5 count.

6 The government does not have to prove that a completed  
7 crime was committed within the Southern District of New York,  
8 or that the defendant was ever in the Southern District of New  
9 York. With respect to Count One, Count Two, and Count Three,  
10 it is sufficient to satisfy the venue requirement if any act in  
11 furtherance of the crime charged occurred in this district.  
12 The act itself need not be a criminal act. And the act need  
13 not have been taken by the defendant so long as the act was  
14 part of the crime that you find he committed.

15 I should note that on this issue and this issue alone,  
16 the government need not prove venue beyond a reasonable doubt,  
17 but only by a mere preponderance of the evidence. A  
18 preponderance of the evidence means that the government must  
19 prove that it is more likely than not that any act in  
20 furtherance of the crime occurred in the Southern District of  
21 New York. Thus, the government has satisfied its venue  
22 obligations if you conclude that it is more likely than not  
23 that any act in furtherance of the crime with which the  
24 defendant is charged occurred within this district.

25 If you find that the government has failed to prove

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Charge

1 this venue requirement with respect to a particular charge,  
2 then you must acquit the defendant of that charge.

3 In order to establish venue for the wire fraud charge  
4 in Count Three, the government must prove the defendant caused  
5 any interstate wire, such as an email, phone call, or financial  
6 transaction to be transmitted into or out of the district. The  
7 wire need not itself be criminal so long as it was transmitted  
8 or caused to be transmitted as part of the scheme or artifice  
9 to defraud. Transmission of the wire need not have been taken  
10 by the defendant so long as the transmission was a foreseeable  
11 part of the crime that you find he committed.

12 Now I'm going to briefly discuss evaluating the  
13 credibility of witnesses.

14 You have had the opportunity to observe the witnesses.  
15 It is now your job to decide how believable or credible each  
16 witness was in his or her testimony. You are the sole judges  
17 of the credibility of each witness and of the importance of his  
18 or her testimony. How do you judge the credibility of  
19 witnesses? There's no magic formula.

20 You should carefully scrutinize all of the testimony  
21 of each witness, the circumstances under which each witness  
22 testified, the impression the witness made when testifying, the  
23 relationship of the witness to the controversy and the parties,  
24 the witness's bias or impartiality, the reasonableness of the  
25 witness's statement, the strength or weakness of the witness's



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1 recollection viewed in light of all other testimony and  
2 evidence, and any other matter in evidence that may help you  
3 decide the truth and the importance of each witness's  
4 testimony.

5 In other words, what you must try to do in deciding  
6 credibility is to size a witness up in light of his or her  
7 demeanor, the explanations given, and all of the other evidence  
8 in the case. You should use your common sense, your good  
9 judgment, and your everyday experiences in life to make  
10 credibility determinations.

11 In passing upon the credibility of a witness, you may  
12 also take into account any inconsistencies or contradictions as  
13 to material matters in his or her testimony.

14 If you find that any witness has willfully testified  
15 falsely as to any material fact, you have the right to reject  
16 the testimony of that witness in its entirety. On the other  
17 hand, even if you find that a witness has testified falsely  
18 about one matter, you may reject as false that portion of his  
19 or her testimony, and accept as true any other portion of the  
20 testimony which commends itself to your belief or which you may  
21 find corroborated by other evidence in this case. A witness  
22 may be inaccurate, contradictory, or even untruthful in some  
23 respects, and yet be truthful and entirely credible in other  
24 respects of his or her testimony.

25 The ultimate question for you to decide in passing

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Charge

1 upon credibility is: Did the witness tell the truth before  
2 you? It is for you to say whether his or her testimony at  
3 trial is truthful in whole or in part.

4 In deciding whether to believe a witness, you should  
5 specifically note any evidence of hostility or affection the  
6 witness may have towards one of the parties. Likewise, you  
7 should consider evidence of any other interest or motive that  
8 the witness may have in cooperating with a particular party.  
9 You should also take into account any evidence of any benefit  
10 that a witness may receive from the outcome of this case.

11 It is your duty to consider whether the witness has  
12 permitted any such bias or interest to color his or her  
13 testimony. In short, if you find that a witness is biased, you  
14 should view his or her testimony with caution, weigh it with  
15 care, and subject it to close and searching scrutiny.

16 Of course, the mere fact that a witness is interested  
17 in the outcome of the case does not mean that he or she has not  
18 told the truth. It is for you to decide from your observations  
19 in applying your common sense and experience and all the other  
20 considerations mentioned whether the possible interest of any  
21 witness has intentionally or otherwise colored or distorted his  
22 or her testimony. You are not required to disbelieve an  
23 interested witness. You may accept as much of his or her  
24 testimony as you deem reliable, and reject as much as you deem  
25 unworthy of acceptance.

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1           You have heard evidence during the trial that  
2 witnesses had discussed the facts of the case in their  
3 testimony with the lawyers before the witnesses appeared in  
4 court. Although you may consider that fact when you are  
5 evaluating a witness's credibility, I should tell you there is  
6 nothing either unusual or improper about a witness meeting with  
7 lawyers before testifying so that the witness can be made aware  
8 of the subjects he or she will be questioned about, focus on  
9 those subjects, and have the opportunity to review relevant  
10 exhibits before being questioned about them. In fact, it would  
11 be unusual for a lawyer to call a witness without such  
12 consultation. Again, the weight you give to the fact or the  
13 nature of the witness's preparation for his or her testimony  
14 and what inferences you draw from such preparation are matters  
15 completely within your discretion.

16           You have heard the testimony of a law enforcement  
17 official. The fact that a witness may be employed as a law  
18 enforcement official does not mean that his or her testimony is  
19 necessarily deserving of more or less consideration or greater  
20 or lesser weight than that of an ordinary witness. In this  
21 context, the defendant is allowed to try to attack the  
22 credibility of such a witness on the ground that his or her  
23 testimony may be colored by a personal or professional interest  
24 in the outcome of the case.

25           It is your decision, after reviewing all of the

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1 evidence, whether to accept the testimony of a law enforcement  
2 witness and to give to that testimony whatever weight, if any,  
3 you find it deserves.

4 The fact that one party called more witnesses and  
5 introduced more evidence than the other does not mean that you  
6 should necessarily find the facts in favor of the side offering  
7 the most witnesses. By the same token, you do not have to  
8 accept the testimony of any witness who has not been  
9 contradicted or impeached if you find the witness not to be  
10 credible. You also have to decide which witnesses to believe  
11 and which facts are true. To do this, you must look at all of  
12 the evidence, drawing upon your own common sense and personal  
13 experience. I have just discussed the criteria for evaluating  
14 credibility. Keep in mind that the burden of proof is always  
15 on the government and the defendant is not required to call any  
16 witnesses or offer any evidence since he is presumed to be  
17 innocent.

18 Now, the defendant did not testify in this case.  
19 Under our constitution, a defendant has no obligation to  
20 testify or to present any evidence because it is the  
21 government's burden to prove the defendant guilty beyond a  
22 reasonable doubt. That burden remains with the government  
23 throughout the entire trial and never shifts to the defendant.  
24 A defendant is never required to prove that he is innocent.

25 You may not speculate as to why the defendant did not

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1 testify. There are many reasons why a defendant may decide not  
2 to testify. You may not attach any significance to the fact  
3 that the defendant did not testify. No adverse inference  
4 against him may be drawn by you because he did not take the  
5 witness stand. You may not consider this against the defendant  
6 in any way in your deliberations in the jury room.

7 Now, certain witnesses in this case were offered as  
8 experts and were permitted to express their opinions about  
9 matters that are in issue. A witness may be permitted to  
10 testify to an opinion on those matters about which he or she  
11 has special knowledge, skill, experience, and training. Such  
12 testimony is presented to you on the theory that someone who is  
13 experienced and knowledgeable in the field can assist you in  
14 understanding the evidence or in reaching an independent  
15 decision on the facts.

16 In weighing this opinion testimony, you may consider  
17 the witness's qualifications, his or her opinions, the reasons  
18 for testifying, as well as all of the other considerations that  
19 ordinarily apply when you are deciding whether or not to  
20 believe a witness's testimony. You may give the opinion  
21 testimony whatever weight, if any, you find it deserves in  
22 light of all the evidence in this case. You should not,  
23 however, accept the testimony of an expert merely because I  
24 allowed the witness to testify as an expert. Nor should you  
25 substitute it for your own reason, judgment, and common sense.

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1 The determination of the facts in this case rests solely with  
2 you.

3 Now, again, you have heard the testimony of law  
4 enforcement and government officials. The fact that a witness  
5 may be employed by the government does not mean that his or her  
6 testimony is necessarily deserving of more or less  
7 consideration, or greater or lesser weight of an ordinary  
8 witness.

9 At the same time, it is quite legitimate for defense  
10 counsel to try to attack the credibility of a law enforcement  
11 witness or government employee witness on the grounds that his  
12 or her testimony may be colored by a personal or professional  
13 interest in the outcome of the case.

14 It is your decision, after reviewing all the evidence,  
15 whether to accept the testimony of the law enforcement  
16 witnesses, or government employee witnesses, and to give that  
17 testimony whatever weight, if any, you find it deserves.

18 You have heard the names of several people during the  
19 course of the trial who did not appear here to testify, and one  
20 or more of the attorneys may have referenced their absence. I  
21 instruct you that each party had an equal opportunity or lack  
22 of opportunity to call any of these witnesses. However, the  
23 government bears the burden of proof, the defendant does not.  
24 Therefore, you should not draw any inferences or reach any  
25 conclusions as to what these persons would have testified to

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1 had they been called. Their absence should not affect your  
2 judgment in any way.

3 You may not draw any inference, favorable or  
4 unfavorable, toward the government or the defendant from the  
5 fact that any person was not named as a defendant in this case,  
6 and you may not speculate as to the reasons why other people  
7 are not on trial before you now. Those matters are wholly  
8 outside your concern and have no bearing on your function as  
9 jurors in deciding the case before you.

10 At certain times during the trial, the parties have  
11 used demonstrative aids to assist you in considering the  
12 evidence or testimony at trial. These demonstrative aids are  
13 not evidence and will not be available to you in the jury room.  
14 However, you may consider these aids if you find them useful in  
15 assessing the evidence or testimony.

16 Some of the exhibits that were admitted into evidence  
17 were in the form of charts and summaries. Those exhibits  
18 purport to summarize the underlying evidence that was used to  
19 prepare them. I admitted these charts and summaries into  
20 evidence in place of or in addition to the underlying documents  
21 that they represent in order to save time and avoid unnecessary  
22 inconvenience. They are no better than the documents upon  
23 which they are based. Therefore, you are to give no greater  
24 consideration to these charts and summaries than you would give  
25 to the evidence upon which they are based. It is for you to

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1 decide whether they correctly present the information contained  
2 in the testimony and in the exhibits on which they were based.

3           You have heard evidence that various platforms the  
4 defendant allegedly used, including FTX, AscendEX, and  
5 Switchboard did have terms of service. You have also heard  
6 evidence in this case that at the time of the events at issue,  
7 Mango Markets did not have terms of service. Terms of service  
8 are civil contracts. This, of course, is a criminal case. It  
9 is not a civil case for breach of contract. In considering  
10 whether the defendant's conduct was manipulative, fraudulent,  
11 or deceptive in violation of the criminal laws at issue in this  
12 case, if you find that the defendant violated terms of service  
13 on certain platforms, that does not by itself mean that the  
14 defendant has committed a crime. Similarly, let me caution you  
15 that the lack of terms of service cannot render any fraudulent  
16 or manipulative conduct legal or immaterial as a matter of law.  
17 In determining whether the defendant has committed any of the  
18 charged offenses, you are to apply the instructions I've given  
19 you today.

20           You have also heard evidence concerning disclaimers  
21 shown to Mango Markets users. Just as with terms of service,  
22 disclaimers cannot render any fraudulent or manipulative  
23 conduct legal or immaterial as a matter of law. Rather, it's  
24 just one of the many factors you may consider when determining  
25 whether the defendant has committed any of the charged



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1 offenses.

2           There's no legal requirement that the government prove  
3 its case through any particular means. Although, you are to  
4 carefully consider the evidence adduced by the government, you  
5 are not to speculate as to why they used the techniques they  
6 did or why they did not use other techniques. The government  
7 is not on trial and law enforcement techniques are not your  
8 concern. Your concern is to determine whether, on the evidence  
9 or lack of evidence, a defendant's guilt has been proven beyond  
10 a reasonable doubt.

11           Your function now is to weigh the evidence in this  
12 case and to determine if the government has sustained its  
13 burden of proof with respect to each count of the indictment.

14           You must base your verdict solely on the evidence and  
15 these instructions as to the law, and you are obliged under  
16 your oath as jurors to follow the law as I have instructed you,  
17 whether you agree or disagree with a particular law in  
18 question.

19           The verdict must represent the considered judgment of  
20 each juror. In order to return a verdict, it is necessary that  
21 each juror agree to it. Your verdict must be unanimous.

22           Let me also remind you that you took an oath to decide  
23 this case impartially, fairly, and without prejudice or  
24 sympathy, without fear solely based on the evidence in this  
25 case and the applicable law.

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1           You have been chosen to try issues of fact and reach a  
2 verdict on the basis of the evidence or lack of evidence. Both  
3 sides are entitled to a fair trial. You are to make a fair and  
4 impartial decision so that you come to a just verdict.

5           So you're about to go into the jury room and begin  
6 your deliberations. A list of exhibits and the exhibits that  
7 were received into evidence will be provided to you in the jury  
8 room. If you want any of the testimony read back to you, you  
9 may also request that. If you want testimony read back to you,  
10 please be as specific as you possibly can. The court reporter  
11 will have to look through the transcript and the parties will  
12 have to agree on what portions of testimony may be called for  
13 in response to your request, and if they disagree, I must  
14 resolve those disagreements. If you have any questions  
15 regarding my instructions to you, you should also send me a  
16 note.

17           Your requests for testimony – in fact any  
18 communications with the Court – should be made to me in  
19 writing, signed by your foreperson, and given to one of the  
20 marshals. In any event, do not tell me or anyone else how the  
21 jury stands on any issue until after a unanimous verdict is  
22 reached.

23           If any one of you took notes during the course of the  
24 trial, you should not show your notes to or discuss your notes  
25 with any other jurors during your deliberations. Any notes you

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1 have taken are to be used solely to assist you. The fact that  
2 a particular juror has taken notes entitles that juror's views  
3 to no greater weight than those of any other juror. Finally,  
4 your notes are not to substitute for your recollection of the  
5 evidence in this case. If, during your deliberations, you have  
6 any doubt as to any of the testimony, you may – as I just told  
7 you – request that an official trial transcript that has been  
8 made in these proceedings be read back to you.

9 You will now retire to decide the case. Again, your  
10 function is to weigh the evidence in this case and to determine  
11 whether the government has proven the guilt of the defendant  
12 with respect to each count charged in the indictment.

13 It is your duty as jurors to consult with one another  
14 and to deliberate with a view to reaching an agreement. Each  
15 of you must decide the case for himself or herself, but you  
16 should do so only after a consideration of the case with your  
17 fellow jurors, and you should not hesitate to change an opinion  
18 when convinced that it is erroneous. Discuss and weigh your  
19 respective opinions dispassionately without regard to sympathy,  
20 without regard to prejudice or favor for either party, and  
21 follow my instructions on the law.

22 When you are deliberating, all 12 jurors must be  
23 present in the jury room. If a juror is absent, you must stop  
24 deliberations.

25 And again, your verdict must be unanimous, but you are

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Charge

1 not bound to surrender your honest convictions concerning the  
2 effect or weight of the evidence for the mere purpose of  
3 returning a verdict or solely because of the opinion of other  
4 jurors. Each of you must make your own decision about the  
5 proper outcome of the case based on your consideration of the  
6 evidence and your discussion with your fellow jurors. No juror  
7 should surrender his or her conscientious beliefs for the  
8 purpose of returning a unanimous verdict.

9 Remember at all times, you are not partisans. You are  
10 judges – judges of the facts. Your sole interest is to seek  
11 the truth from the evidence in this case.

12 If you are divided, do not report how the vote stands.  
13 If you reach a verdict, do not report what it is until you are  
14 asked in open court.

15 Now, I've prepared a verdict form for you to use in  
16 guiding your deliberation. In recording your decision, please  
17 use that form to report your verdict. It will be provided to  
18 you back in the jury room.

19 The first thing you should do when you retire to  
20 deliberate is take a vote to select one of you to sit as your  
21 foreperson, and then send out a note indicating whom you have  
22 chosen.

23 The foreperson doesn't have any more power or  
24 authority than any other juror, and his or her vote or opinion  
25 doesn't count for any more than any other juror's vote or

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1 opinion. The foreperson is just your spokesperson to this  
2 Court. He or she will send out any notes, and when the jury  
3 has reached a verdict, he or she will notify the marshal that  
4 the jury has reached a verdict, and you will come into open  
5 court and give the verdict.

6 After you have reached a verdict, your foreperson will  
7 fill in and date the form that has been given to you. All  
8 jurors must sign the form reflecting each juror's agreement  
9 with the verdict. The foreperson should then advise the  
10 marshal outside your door that you are ready to return to the  
11 courtroom.

12 I will stress that each of you must be in agreement  
13 with the verdict that is announced in court. Once your verdict  
14 is announced by your foreperson in open court and officially  
15 recorded, it cannot ordinarily be revoked.

16 Now, at this time, the first 12 jurors will begin  
17 their deliberations in this case. Our final juror, who is an  
18 alternate, will not deliberate at this time. I believe that is  
19 Ms. Levenstone. Nevertheless, the alternate juror,  
20 Ms. Levenstone, is not quite excused. While the jury conducts  
21 its deliberations, you do not have to be here in court, but you  
22 should give Mr. Hernandez phone numbers where you can be  
23 reached because it is possible that you could be needed to  
24 deliberate if a juror is unable to continue. Mr. Hernandez  
25 will call you when deliberations are completed so that you will

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1 know you are completely finished.

2 Between now and then, you must continue to observe all  
3 of the restrictions I have instructed you on throughout the  
4 trial. That is, you must not discuss this case with anyone,  
5 including the other jurors, other people involved in the trial,  
6 members of your family, friends, coworkers, or anyone else, and  
7 until a verdict is reached, as I have already instructed, you  
8 may not communicate with anyone about this case in any way. If  
9 anyone approaches you and tries to talk to you about the case,  
10 please report that to me through Mr. Hernandez immediately.

11 Do not listen to or watch or read any news reports  
12 concerning this trial. If there were to be any, do not do any  
13 research on the internet or otherwise. The reason for this, of  
14 course, is that should you be asked to participate in reaching  
15 a verdict in this case, the only information you will be  
16 allowed to consider is what you learned in the courtroom during  
17 this trial. Now, please accept my heartfelt gratitude for your  
18 service.

19 I'm sorry you will likely miss the experience of  
20 deliberating with the jury, but the law provides for a jury of  
21 12 persons in this case. So before the rest of the jury  
22 retires to the jury room, if you have any clothing or objects  
23 out there, you can pick them up and withdraw them, and without  
24 discussing the case, you may also say your goodbyes to your  
25 fellow jurors. I want to say, I'm very thankful that you've

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1 been here for this trial. You were one of the reasons we made  
2 sure to get through the trial with the 12 jurors that we needed  
3 for deliberations, and you still may be needed in this case.  
4 You've worked so hard, and I appreciate it and all the parties  
5 appreciate it too. So when the jury goes back to the jury  
6 room, we give you a chance to get your materials, say any  
7 goodbyes, and after that point, the jury will begin its  
8 deliberations.

9 One final note on timing. At this point onward you  
10 are free to deliberate as you see fit, and if you are all in  
11 agreement, you may stay until 5:00 p.m. to continue your  
12 deliberations, or even later if all jurors agree. I know there  
13 is one conflict today. I think one of the jurors has a meeting  
14 that they would like to attend at 5:00. So as for today, you  
15 can end a little earlier, you can do that by agreement, and  
16 that will be okay for today.

17 Please be mindful of other jurors' time constraints,  
18 such as the one we're accommodating today, in making your  
19 determination of how long to deliberate each day. Meals will  
20 be provided. You can let the marshals and Mr. Hernandez know  
21 if you have any questions in that regard.

22 In conclusion, ladies and gentlemen, I am sure that if  
23 you listen to the views of your fellow jurors, and if you apply  
24 your own common sense, you will reach a fair verdict here.

25 All right. Thank you for your patience and your

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1 attention. I can tell during the instructions that you were  
2 reading along, so I know that you've been following very  
3 closely. What we will do at this time is that we will have you  
4 retire to the jury room.

5 Ms. Levenstone, you can take your materials, say your  
6 goodbyes, you can leave. At that point, the jury will begin  
7 their deliberations.

8 (Jury not present)

9 Here's what we'll do, sort of order of operations.  
10 Mr. Hernandez, why don't you head back and make sure if  
11 Ms. Levenstone has any questions, you could attend to those.  
12 Once she leaves, we'll swear in the marshal, then we'll proceed  
13 from that point.

14 Do the parties have the laptop and exhibit list to  
15 provide to the jury?

16 MR. SEARS: We have the laptop.

17 THE COURT: What about the exhibit list?

18 MR. SEARS: We don't have a printed version, but we  
19 can go print one right now.

20 THE COURT: You want to email it to us and then we'll  
21 print it out to save you the trouble.

22 MR. SEARS: It's emailed.

23 THE COURT: On the defense side, do you know what's  
24 being furnished to the jury? Has everyone taken a look and  
25 it's agreed upon?



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1 MR. KLEIN: Yes, your Honor.

2 THE COURT: We'll take care of that in order.

3 Mr. Davis or whoever wants to speak for the  
4 government, anything further for the Court to address from the  
5 government?

6 MR. DAVIS: No, your Honor. Thank you.

7 THE COURT: Anything from the defense?

8 MR. KLEIN: No, your Honor.

9 THE COURT: What you should do is stay close. What  
10 we'll do today is there's one juror who may have a meeting that  
11 he or she needs to attend to. And so, we'll give them about an  
12 hour and we'll be back here, I'll excuse the jury for the day.  
13 Stay close and we'll see if we need you back before then. I  
14 don't anticipate that will be the case, but we'll be back here  
15 around 4:30 so that we can be here to excuse the jury from the  
16 day.

17 From tomorrow on, I'm going to tell the jury that they  
18 can go straight into the jury room and begin their  
19 deliberations. So you certainly don't need to be here at 8:30.

20 MR. KLEIN: Just not used to it, your Honor.

21 THE COURT: Don't need to be here by 8:30, but try to  
22 be here around 9:30 in case we have a note from the jury so we  
23 don't have to have them wait and so we can figure that out. We  
24 will proceed from there.

25 Mr. Oshinsky, is the correct exhibit list the one sent

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1 out at 12:03 p.m.?

2 MR. OSHINSKY: Yes.

3 THE COURT: Anything else that we need to take care  
4 of?

5 Mr. Hernandez, Ms. Levenstone.

6 THE DEPUTY CLERK: Yes. And I'm printing the  
7 document, your Honor.

8 THE COURT: Let's swear in the marshal and then we  
9 will -- then I think we can take care of that first and we can  
10 drop the laptop and the exhibit list.

11 (Marshal sworn)

12 I heard something printing, so I think we probably  
13 have the exhibit list. Do either side want to take a look at  
14 it to make sure it's the right one? Just give them a quick  
15 look.

16 So, we don't have it because we had a printer error.  
17 We'll get that attended to.

18 Otherwise, two things I wanted to raise.

19 First of all, Mr. Klein or Mr. Talkin, in terms of  
20 Mr. Eisenberg, just help me with, it might be a dumb question,  
21 but while we're waiting and while we're here in the courtroom,  
22 what happens to Mr. Eisenberg?

23 MR. TALKIN: Your Honor, my understanding is that's  
24 the marshals' call. My experience, if it's something quick, an  
25 hour turnaround, they usually leave him up. Tomorrow, they

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1 leave him down until the first note you think something is  
2 going to happen fast, and they can correct me if I'm wrong, but  
3 I think that's been how they deal with it.

4 THE MARSHAL: That's correct, your Honor. We can have  
5 him up here for the rest of the day. If we get a note  
6 tomorrow, we'll bring him up immediately. We'll be on standby  
7 to bring him up as soon as possible.

8 THE COURT: Is there a way for, if he would want to,  
9 for him to spend any time with family members that are in the  
10 audience?

11 THE MARSHAL: He can do it here if the Court permits  
12 that. I have no problem with that.

13 THE COURT: Okay. We received a note from the jury  
14 that they have selected their foreperson. It is Joshua Mann,  
15 juror No. 5. We will put a timestamp on here, we will make it  
16 an exhibit for the record, and the parties are free to examine  
17 that if they so choose.

18 First of all, to the marshals, I'm happy to order  
19 anything you need me to, to accommodate Mr. Eisenberg spending  
20 time with his family during this time. This is going to sound  
21 like a really dumb question, but just on a human level, if  
22 there's a way to -- if Mr. Eisenberg wants to give his mom a  
23 hug or something like that, if there's a way to make that  
24 happen, if we can do that in a way that's in accordance with  
25 your guidelines, let me know. Mr. Klein, Mr. Talkin, you'll

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1 let me know if there's something you need my help with, but I'm  
2 happy to accommodate the defendant if there's a way we can do  
3 that in accordance with the rules that are in place.

4 MR. KLEIN: Thank you, your Honor.

5 THE DEPUTY CLERK: Your Honor, I have the printed  
6 sheet. May I show the parties?

7 THE COURT: Show the parties.

8 Last thing, I'll let you all sort out the exhibit  
9 list, but I think this is the appropriate time to say this case  
10 was exceptionally tried on both side. I really appreciate the  
11 good lawyering, the professional lawyering, the collegiality  
12 between the sides in this case. You really all did, on both  
13 sides, a fantastic job. So I really wanted to congratulate you  
14 and thank you for all your hard work the past week and a half.  
15 So thank you very much.

16 You'll let me know if there's any issues with the  
17 exhibit list, but there shouldn't be.

18 (Recess)

19 We received a note from our jury that says, we are  
20 finished for today. We need to continue tomorrow.

21 That can certainly be reviewed by everyone. Enter it  
22 as Court Exhibit C.

23 Unless there's anything else, we'll bring back the  
24 jury. Mr. Hernandez, you can bring out our jury.

25 THE DEPUTY CLERK: Yes, your Honor.

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1 (Jury present)

2 THE COURT: Welcome back. We're a little bit short of  
3 5 o'clock, but we're going to excuse you for today. Thank you  
4 for all your hard work. It's been a very long day. You've  
5 kept your attention the entire day, which I really appreciate.

6 So let me give you some closing instructions.

7 First of all, tomorrow you should arrive before 9:00  
8 a.m., same thing, by 8:45 if you can so you can resume your  
9 deliberations. There should be breakfast for you as usual.  
10 Once again, you'll find lunch order forms for tomorrow so you  
11 don't need to interrupt your deliberations. You can continue  
12 through lunch. You can obviously take a break if you like,  
13 it's up to you, during lunch, but bottom line is that way  
14 you'll be in the jury room to continue your deliberations.

15 I am not going to bring you in the courtroom in the  
16 morning. You can resume your deliberations when you're all  
17 present. But let me stress that you all must be present. That  
18 is to say you should not resume discussing the case with one  
19 another until all 12 of you are there. Unless all 12 of you  
20 are there, you can't deliberate. You need to deliberate as a  
21 whole. So, for that reason, continue to talk about the  
22 weather, sports, I heard a lot of laughs back there, so you're  
23 talking about something, but not about this case until all 12  
24 of you are there. Once all 12 of you are there, you may resume  
25 your deliberations, and that's out of respect for one another,

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1 if not for everyone here. For that reason, please be in the  
2 jury room, try to be there by the 8:45 time that you've been  
3 trying to get there so you can resume no later than 9:00 a.m.

4 In the meantime, for the reasons I just described,  
5 don't discuss the case with each other or with anyone else  
6 until you resume your deliberations when all 12 of you have  
7 arrived tomorrow. Don't do any research about the case. All  
8 of the instructions that I've given you previously about not  
9 considering anything, not having discussions, please follow  
10 that.

11 And you should continue to keep an open mind to ensure  
12 that you have an open mind when you resume your deliberations  
13 with one another. Leave your notebooks as well as the laptop,  
14 exhibit list, jury instructions in the jury room. My staff and  
15 the court security officer will secure it overnight.

16 With that, I wish you a very pleasant evening and I  
17 will see you at some point tomorrow. If we get a note from you  
18 during the day, I presume I'll see you earlier, if not, I'll  
19 bring you out at the end of the day as I have today.

20 Thank you so much. Have a great evening.

21 (Jury not present)

22 Anything further from either side?

23 MR. DAVIS: No, your Honor. Thank you.

24 MR. KLEIN: No, your Honor.

25 THE COURT: Take some rest. Hopefully you guys can

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1 get some rest tonight. See you tomorrow.

2 (Adjourned to April 18, 2024 at 9:30 a.m.)

3 \* \* \*